

MODESTO CITY SCHOOLS

Board Policy

BP 5145.7

STUDENTS

~~Student~~ Sexual Harassment

→ The Board of Education's intent is to maintain an academic and work environment which protects the dignity and promotes the mutual respect of all pupils. The Governing Board is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual harassment targeted at any student by anyone. The Board also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment.

The district strongly encourages any student who feels that he/she is being or has been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult, or who has experienced off-campus sexual harassment that has a continuing effect on campus, to immediately contact his/her teacher, the principal, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the principal or a district compliance officer. Once notified, the principal or compliance officer shall take the steps to investigate and address the allegation, as

→ specified in the accompanying administrative regulation (AR 5145.7).

(cf. 0410 - Nondiscrimination in District Programs and Activities)(N/A)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)(N/A)

(cf. 5137 - Positive School Climate)(N/A)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)(N/A)

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy.

BP 5145.7 (a)**STUDENTS****Student Sexual Harassment****Instruction/Information**

The Superintendent or designee shall ensure that all district students receive age-appropriate information on sexual harassment. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex and could involve sexual violence
2. A clear message that students do not have to endure sexual harassment under any circumstance
3. Encouragement to report observed incidents of sexual harassment even where the alleged victim of the harassment has not complained
4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved
5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and prompt action shall be taken to stop any harassment, prevent recurrence, and address any continuing effect on students
6. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment should be made

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7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a sexual harassment complaint continues
8. A clear message that, when needed, the district will take interim measures to ensure a safe school environment for a student who is the complainant or victim of sexual harassment and/or other students during an investigation and that, to the extent possible, when such interim measures are taken, they shall not disadvantage the complainant or victim of the alleged harassment

Complaint Process and Disciplinary ActionsIntroduction

~~It is the Board of Education's intent to maintain an academic and work environment which protects the dignity and promotes the mutual respect of all employees and pupils. The Board of Education prohibits sexual harassment of any student by any employee, student, or other person in or from the district. Board of Education expects students or staff to immediately report incidents of sexual harassment to a site administrator or to another district administrator.~~

~~Each site administrator has the responsibility of maintaining an educational and work environment free of sexual harassment. This responsibility includes discussing this policy with his/her students and employees and assuring them that they need not endure sexually insulting, degrading, or exploitative treatment or any other form of sexual harassment, including harassment because of sexual orientation.~~

~~Each sexual harassment complaint shall be promptly investigated in a way designed to respect the privacy of all parties concerned.~~

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~~Pupils who file sexual harassment complaints shall not be retaliated against for making such a complaint.~~

Definition of Sexual Harassment

~~“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in the work or educational setting under any of the following conditions:~~

- ~~1. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.~~
- ~~2. Submission to, or rejection of, the conduct by the individual is used as the basis of academic decisions affecting the individual.~~
- ~~3. The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile or offensive educational environment.~~
- ~~4. 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 educational institution.~~

Examples of Sexual Harassment

~~Sexual harassment may occur as a pattern of degrading sexual speech or action ranging from verbal or physical annoyances or distractions to deliberate intimidation and frank threats or sexual demands. Such conduct may constitute sexual harassment, regardless of an individual’s actual or perceived sexual orientation.~~

Forms of sexual harassment include, but are not limited to the following:

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1. ~~Verbal Harassment—Derogatory comments, jokes, or slurs; graphic verbal abuse of a sexual nature; comments about an individual’s body/dress, sexual preferences or sexual conduct; sexually degrading words used to demean, label, or describe an individual; or spreading sexual rumors.~~
2. ~~Physical Harassment—Unnecessary or offensive touching, or impeding or blocking movement.~~
3. ~~Visual Harassment—Derogatory or offensive posters, cards, cartoons, graffiti, drawings, or gestures; suggestive or obscene letters, notes or invitations; the display in the educational environment of sexually suggestive objects or pictures.~~
4. ~~Sexual Favors—Unwelcome sexual advances, requests for sexual favors, unwelcome sexual flirtations or propositions.~~

Retaliation

The District prohibits retaliatory behavior against any complainant as a result of a negative response to sexual advances or the making of an informal or formal complaint alleging sexual harassment.

Any student who feels that he/she is being sexually harassed should immediately contact a school site or district administrator or other staff member. Staff members and teachers who receive complaints of sexual harassment from students should refer such complaints to the site or other district administrator (AR 5145.7).

If the site or district administrator is notified that an allegation of sexual harassment was not addressed to the complainant’s satisfaction, that administrator should provide the student and/or the student’s parent/ guardian with a copy of the District’s sexual harassment policy and complaint procedures.

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Sexual harassment complaints by and against students shall be investigated and resolved in accordance with law and district procedures specified in AR 1312.3 - Uniform Complaint Procedures. Principals are responsible for notifying students and parents/guardians that complaints of sexual harassment can be filed under AR 1312.3 and where to obtain a copy of the procedures.

(cf. 1312.3 - Uniform Complaint Procedures)

Upon investigation of a sexual harassment complaint, any student found to have engaged in sexual harassment or sexual violence in violation of this policy shall be

~~District prohibits retaliatory behavior against any complainant or any participant in the complaint process.~~

Consequences for Sexual Harassment

~~Any student who engages in sexual harassment is~~ subject to disciplinary action. **For students in grades 4-12, according to Board Policy 5131, Student Conduct Code K-6 and Board Policy 5132, Student Conduct Code 7-12 and in accordance with the Education Code. Employees are subject to** disciplinary action **may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.**

(cf. 5144 - Discipline)(N/A)

(cf. 5144.1 - Suspension and Expulsion/Due Process)(N/A)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))(N/A)

Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall have his/her employment terminated ~~according to Board policies 4119.11(certificated), 4219.13 (classified), and 4319.13 (management, supervisory and confidential) and~~ in accordance with **law**

and the applicable collective bargaining agreement. the Education Code.

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Notifications

According to state law and Federal Title IX requirements, a copy of the District's student sexual harassment policies should:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 39 C.F.R. Section 106.9).
2. Be displayed in a prominent location near the administrative office or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted (E.C. 212.6).
3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session, and to any newly enrolled student who transfers into the district after the beginning of a semester (E.C. 212.6).
4. Appear in any school or district publication that sets forth the school or district's comprehensive rules, regulations, procedures and standards of conduct (E.C. 212.6).

Teachers should discuss this policy with their students in age-appropriate ways and should assure them that they need not endure any form of sexual harassment.

1312.1 – Complaints Concerning School Personnel)
1312.3 – Uniform Complaint Procedures)

(cf. 4117.7/4317.7 - Employment Status Report)(N/A)
(cf. 4118 - Dismissal/Suspension/Disciplinary Action)(N/A)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)(N/A)
(cf. 4119.11 –~~Sexual Harassment – Certificated Personnel~~)

~~4219.1113/4319.1113 – Prohibition of Sexual Harassment) – Classified/~~

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Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of sexual harassment to enable the district to monitor, address, and prevent repetitive harassing behavior in district schools.

~~(cf. 3580 - District Records)(N/A) Management, Supervisory and Confidential Personnel)~~

~~(cf. 5131 – Student Conduct Code K-6)~~

~~(cf. 5132 – Student Conduct Code 7-12)~~

~~(cf. 5145.3 – Nondiscrimination in Education Programs and Activities)~~

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

48900 Grounds for suspension or expulsion

48900.2 Additional grounds for suspension or expulsion; sexual harassment

48904 Liability of parent/guardian for willful student misconduct

48980 Notice at beginning of term

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships

1714.1 Liability of parents/guardians for willful misconduct of minor

GOVERNMENT CODE

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX, discrimination

UNITED STATES CODE, TITLE 42

1983 Civil action for deprivation of rights

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

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

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

106.1-106.71 Nondiscrimination on the basis of sex in education programs

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COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003, 9th Cir.) 324 F.3d 1130

Reese v. Jefferson School District, (2001, 9th Cir.) 208 F.3d 736

Davis v. Monroe County Board of Education, (1999) 526 U.S. 629

Gebser v. Lago Vista Independent School District, (1998) 524 U.S. 274

Oona by Kate S. v. McCaffrey, (1998, 9th Cir.) 143 F.3d 473

Doe v. Petaluma City School District, (1995, 9th Cir.) 54 F.3d 1447

Management Resources:

CSBA PUBLICATIONS

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Q&A on Campus Sexual Misconduct, September 2017

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001

WEB SITES

CSBA: <http://www.csba.org>

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

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

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

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