

# **MODESTO CITY SCHOOLS**

## **Administrative Regulation**

**AR 5145.7**

### **STUDENTS**

#### **~~Student~~ Sexual Harassment**

The **district** designates the following individual(s) as the responsible employee(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 and California Education Code 234.1, as well as to investigate and resolve sexual harassment complaints under AR 1312.3 - Uniform Complaint Procedures. The coordinator/compliance officer(s) may be contacted at:

#### **STUDENT TO STUDENT:**

**Associate Superintendent, Educational Services  
426 Locust Street, Modesto, CA 95351  
(209) 574-1500**

#### **EMPLOYEE TO STUDENT/STUDENT TO EMPLOYEE:**

**Mike Henderson  
Associate Superintendent, Human Resources  
426 Locust Street, Modesto, CA 95351  
(209) 492-3122  
henderson.m@mcs4kids.com**

**(cf. 1312.3 - Uniform Complaint Procedures)**

**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, under any of the following conditions: (Education Code 212.5; 5 CCR 4916)**

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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.

(cf. 5131 - Conduct)

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

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

(cf. 5145.3 - Nondiscrimination/Harassment)

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

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

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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
12. Electronic communications containing comments, words, or images described above

Any prohibited conduct that occurs off campus or outside of school-related or school-sponsored programs or activities will be regarded as sexual harassment in violation of district policy if it has a continuing effect on or creates a hostile school environment for the complainant or victim of the conduct.

**Reporting Process and Complaint Investigation and Resolution**

Any student who believes that he/she has been subjected to sexual harassment by another student, an employee, or a third party or who has witnessed sexual harassment is strongly encouraged to report the incident to his/her teacher, the principal, or any other available school employee. Within one school day of receiving such a report, the school employee shall forward the report to the principal or the district's compliance officer identified in AR 1312.3. In addition, any school employee who observes an incident of sexual harassment involving a student shall, within one school day, report his/her observation to the principal or a district compliance officer. The employee shall take these actions, whether or not the alleged victim files a complaint.

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When a report or complaint of sexual harassment involves off-campus conduct, the principal shall assess whether the conduct may create or contribute to the creation of a hostile school environment. If he/she determines that a hostile environment may be created, the complaint shall be investigated and resolved in the same manner as if the prohibited conduct occurred at school.

When a verbal or informal report of sexual harassment is submitted, the principal or compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with the district's uniform complaint procedures.

Regardless of whether a formal complaint is filed, the principal or compliance officer shall take steps to investigate the allegations and, if sexual harassment is found, shall take prompt action to stop it, prevent recurrence, and address any continuing effects.

If a complaint of sexual harassment is initially submitted to the principal, he/she shall, within two school days, forward the report to the compliance officer to initiate investigation of the complaint. The compliance officer shall contact the complainant and investigate and resolve the complaint in accordance with law and district procedures specified in AR 1312.3.

In investigating a sexual harassment complaint, evidence of past sexual relationships of the victim shall not be considered, except to the extent that such evidence may relate to the victim's prior relationship with the respondent.

In any case of sexual harassment involving the principal, compliance officer, or any other person to whom the incident would ordinarily be reported or filed, the report may instead be submitted to the Superintendent or designee who shall determine who will investigate the complaint.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

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**Confidentiality**

All complaints and allegations of sexual harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR 4964)

However, when a complainant or victim of sexual harassment notifies the district of the harassment but requests confidentiality, the compliance officer shall inform him/her that the request may limit the district's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the district will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant or victim of sexual harassment notifies the district of the harassment but requests that the district not pursue an investigation, the district will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)(N/A)  
(cf. 5125 - Student Records)

**Response Pending Investigation**

When an incident of sexual harassment is reported, the principal or designee, in consultation with the compliance officer, shall determine whether interim measures are necessary pending the results of the investigation. The principal/designee or compliance officer shall take immediate measures necessary to stop the harassment and protect students and/or ensure their access to the educational program. To the extent possible, such interim measures shall not disadvantage the complainant or victim of the alleged harassment. Interim measures may include placing the individuals involved in separate classes or transferring a student to a class taught by a different teacher, in accordance with law and Board policy. The school should notify the

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individual who was harassed of his/her options to avoid contact with the alleged harasser and allow the complainant to change academic and extracurricular arrangements as appropriate. The school should also ensure that the complainant is aware of the resources and assistance, such as counseling, that are available to him/her. As appropriate, such actions shall be considered even when a student chooses to not file a formal complaint or the sexual harassment occurs off school grounds or outside school-sponsored or school-related programs or activities.

## 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)

(cf. 5145.6 - Parental Notifications)(N/A)

~~Federal and State law prohibits the sexual harassment of a student. In timely investigating and redressing complaints of sexual harassment pursuant to the complaint procedure, action shall be taken in a manner designed to maintain the confidentiality of the parties involved. It is the intent of this procedure to provide prompt recourse, fairness and equity to both the individual alleging sexual harassment and the individual accused of engaging in such conduct.~~

~~Accordingly, the Board of Education will not tolerate sexual harassment and will make efforts to maintain schools free from sexual harassment.~~

~~The Governing Board is committed to ensuring that students are not adversely affected for having brought forward a sexual harassment complaint. All participants in these procedures shall be protected from retaliatory acts by the District, its employees~~

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~~and students. If retaliation or reprisal does occur, disciplinary action may be imposed.~~

~~Nothing in this procedure shall affect the right of the complainant to pursue the matter with any State or Federal enforcement agency. Sexual harassment complaints may be filed concurrently with an external agency to meet State and Federal agency deadlines without jeopardizing an individual's rights to pursue a complaint under this procedure.~~

## PURPOSE OF COMPLAINT PROCEDURE

~~purpose of the complaint procedures is to ensure that no student shall be subjected to sexual harassment under any program, activity or service offered by the District.~~

## DEFINITION OF TERMS

~~Title IX Coordinators The Associate Superintendent, Educational Services is the Title IX Coordinator for student to student sexual harassment and is designated by the District to receive and process complaints under this procedure. The Associate Superintendent can be reached at Modesto City Schools District Office, 426 Locust Street, Modesto, CA 95351; (209) 550-3300 x5037.~~

~~The Deputy Superintendent, Human Resources is the Title IX Coordinator for any student sexual harassment complaints involving employees of the District. The Deputy Superintendent can be reached at Modesto City Schools District Office, 426 Locust Street, Modesto, CA 95351; (209) 550-3301 x5498.~~

~~Complainant A student and/or the student's parent/guardian who believes the student has been sexually harassed.~~

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~~Respondent—The individual who allegedly sexually harassed the complainant.~~

~~Days—As used in this procedure, “days” means working days. Timelines in these complaint procedures may be extended by mutual agreement, or by the direction of the Title IX Coordinator.~~

INFORMAL COMPLAINT PROCEDURES

- ~~1. Any student, or the student’s parent/guardian, who believes that an employee or another student has sexually harassed him/her should immediately contact a school site administrator or other District administrator. The complainant should notify the administrator no later than thirty (30) days from the last incident which is the subject matter of the complaint.~~
- ~~2. The site or District administrator will conduct an independent investigation into the allegations of sexual harassment in a manner designed to respect the privacy of all parties concerned. If the allegations of sexual harassment involve an employee, the site or District administrator will contact the Deputy Superintendent, Human Resources upon receipt of the complaint.~~
- ~~3. If, as a result of the investigation, a determination is made that a student or an employee has sexually harassed another student, appropriate action will be implemented. Any employee or student who is found to have sexually harassed a student will be disciplined according to the nature and severity of the offense. The complainant should notify the site or District administrator if he/she is not satisfied with the informal resolution of the complaint. The administrator should then give the complainant a copy of the District’s sexual harassment policy and complaint procedures.~~

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- ~~5. An informal resolution may occur at any time.~~
- ~~6. The informal complaint should be resolved by the site or District administrator within thirty (30) days of the date that the administrator received the complaint.~~

FORMAL COMPLAINT PROCEDURES

Step One

- ~~1. If the complainant is not satisfied with the informal resolution of the complaint by the site or District administrator receiving the informal complaint, the complainant may choose to file a formal complaint. The following procedures must be followed in filing a formal complaint:~~
  - ~~a. A written complaint must be presented within sixty (60) days of the date of the last incident which is the subject matter of the complaint. The complainant shall present a written complaint to the supervisor of the administrator to whom the informal complaint was first presented. The administrator receiving the informal complaint should also inform the complainant as to which supervisor may receive the formal complaint.~~

The complaint should contain the following information:

- ~~(1) the complainant's name, address, and home telephone number;~~
- ~~(2) the name of the student or employee who committed the alleged violation;~~
- ~~(3) a description of the alleged sexual harassment;~~

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- ~~(4) a specific description of the time, place, nature, participants in, and witnesses to the alleged sexual harassment; and~~
- ~~(5) other pertinent information which may assist in investigating and resolving the complaint.~~
- ~~b. If the complaining party so desires, he/she may request the assistance of the site or District administrator to whom he/she informally complained, in preparing and presenting a written complaint.~~
- ~~c. Once the formal written complaint is filed, the supervisor of the site or District administrator will conduct an independent investigation into the charges made in the written complaint. The party to whom the complaint is presented must render a written determination within twenty (20) working days of receipt of the complaint.~~

## Step Two

- ~~2. If the complaint is not resolved in Step 1 to the complainant's satisfaction, the complainant may appeal that resolution pursuant to the following procedures:~~
  - ~~a. The student may submit his/her written complaint to the Associate Superintendent, Educational Services (if the allegation is a student-to-student complaint) or the Deputy Superintendent, Human Resources (for any student sexual harassment complaints involving employees of the District) within ten (10) working days of receipt of the decision of the supervisor of the site or District administrator handling the informal complaint.~~

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- ~~b. The appropriate Deputy or Associate Superintendent, the complaining party, and the supervisor of the administrator receiving the informal complaint who has provided a written response to the complainant will meet to discuss the complaint.~~
- ~~c. The party to whom the complaint was presented in Step 2 (Deputy or Associate Superintendent) shall provide a written decision within ten (10) working days of this meeting. Copies of the decision shall be provided to all parties present at the meeting.~~

APPEAL TO THE GOVERNING BOARD

~~If the complainant is not satisfied with the decision of the Deputy or Associate Superintendent, he/she has fifteen (15) working days in which to file a written appeal with the District's Governing Board. The Superintendent/designee shall provide the Governing Board with the information concerning the complaint, investigation and resolution at previous levels.~~

- ~~2. Consistent with Board of Education agenda deadlines, at the next regular meeting of the Board of Education, the Governing Board shall consider the complainant's appeal and shall issue a final decision. Where authorized by law, the Governing Board shall meet in Closed Session to address the appeal.~~

FURTHER APPEAL OPTIONS

- ~~1. If the complainant is not satisfied with the decision of the Governing Board, he/she has the right to file a sexual harassment complaint with an appropriate State or Federal enforcement agency (i.e. State Department of Education, U. S. Department of Education, Office for Civil Rights).~~

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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 (Education Code 231.5)

A copy of the district's sexual harassment policy and regulation shall be posted on district and school web sites and, when available, on district-supported social media.

(cf. 1113 - District and School Web Sites)(N/A)

(cf. 1114 - District-Sponsored Social Media)(N/A)

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)
5. Be included in the student handbook
6. Be provided to employees and employee organizations

~~Complainants are reminded that they continue to have the ability to pursue local civil remedies to address matters giving rise to the complaint. Such local remedies include, but are not limited to, pursuing mediation informally or formally, alternative dispute resolution, or initiating legal action in court seeking equitable relief and/or damages. A complainant also has the right to be represented by legal counsel at his or her own expense. Counsel may be identified by consulting the local telephone directory, courts or California Bar Association to identify attorneys or non-profit legal assistance agencies which can provide assistance.~~

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NOTE: Authority cited: Education Code 232 and 33031;  
Government Code 11138; 5 CCS 4650

Legal References

Government Code 11135, 11136, 11138  
34 CFR 76.780 and 106.8

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