

# MODESTO CITY SCHOOLS

## Board Policy

BP 4119.13~~1~~/4219.13~~1~~/4319.13~~1~~

### ALL PERSONNEL

#### Sexual Harassment

The Governing Board is committed to providing a safe work environment that is free of harassment and intimidation. The Board prohibits sexual harassment against district employees and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy. ~~The Board of Education prohibits sexual harassment of District employees or applicants.~~

Sexual harassment includes, but is not limited to, harassment that is based on the gender, gender identity, gender expression, or sexual orientation of the victim.

This policy shall apply to all district employees and to other persons on district property or with some employment relationship with the district, such as interns, volunteers, contractors, and job applicants.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*  
*(cf. 4030 - Nondiscrimination in Employment)*

Any district employee who engages or participates in sexual harassment or who aids, abets, incites, compels, or coerces another to commit sexual harassment in violation of this policy is subject to disciplinary action, up to and including dismissal.

#### Definitions

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 work or educational setting when: (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.

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2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. 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.

Prohibited sexual harassment also includes conduct which, regardless of whether or not it is motivated by sexual desire, is so severe or pervasive as to unreasonably interfere with the victim's work performance or create an intimidating, hostile, or offensive work environment.

~~Sexual harassment is as defined in the Education Code and applicable non-discrimination law.\* Education Code 212.5 defines sexual harassment as 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:~~

- ~~(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status or progress.~~
- ~~(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.~~
- ~~(c) 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 work or educational environment.~~
- ~~(d) 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.~~

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***\*NOTE: Education Code 48900.2 states: "For the purposes of this chapter, the conduct described in section 212.5 must be considered to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment."***

Examples of actions that might constitute sexual harassment 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~~

**The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:**

- 1. Providing training to employees in accordance with law and administrative regulation**
- 2. Publicizing and disseminating the district's sexual harassment policy to employees and others to whom the policy may apply**

***(cf. 4112.9/4212.9/4312.9 - Employee Notifications)***

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3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments.

The Superintendent or designee shall periodically evaluate the effectiveness of the district's strategies to prevent and address harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the district's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, complaint procedures, or training.

### Sexual Harassment Reports and Complaints

Any district employee who feels that he/she has been sexually harassed in the performance of his/her district responsibilities or who has knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to his/her direct supervisor, another supervisor, the district's coordinator for nondiscrimination, or the Superintendent, ~~or, if available, a complaint hotline or an ombudsman.~~ A supervisor or administrator who receives a harassment complaint shall promptly notify the coordinator.

~~The Board expects employees to immediately report incidents of such sexual harassment. Any employee or applicant for employment who feels that he/she or another individual in the District is being harassed in violation of this policy should immediately contact his/her supervisor, site administrator, another district administrator, the Associate Superintendent, Personnel, or the Superintendent in order to obtain procedures for reporting a complaint.~~

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Complaints of sexual harassment should be filed in accordance with AR 4119.141/ 4219.141/4319.141, Complaint Procedure for Sexual Harassment in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (2 CCR 11023)

Any supervisor, site administrator or other district administrator who receives a sexual harassment complaint shall notify the Associate Superintendent, Personnel Human Resources, who shall be responsible for overseeing the investigation of the complaint. Each complaint shall be timely investigated in a manner designed to respect the privacy rights of all parties to the complaint. (If such complaint is made against the Associate Superintendent, Personnel Human Resources, it shall be directed to the Superintendent. If such a complaint is made against the Superintendent, it shall be directed to the President of the Board of Education.)

Any employee who engages in such sexual harassment of an employee or applicant, student and/or volunteer during his or her employment may be subject to just cause disciplinary action up to and including dismissal. Any student who engages in such harassment of an employee or applicant may be subject to disciplinary action up to and including expulsion.

The District also prohibits retaliatory conduct against any harassment complainant or any participant in the complaint process.

This policy shall be displayed in a prominent location in the Modesto City Schools' administrative building and other District school and work sites. This policy shall be provided to current District employees and shall be provided to new employees at orientation.

(cf. 4119.141/4219.141/4319.141 - Complaint Procedure for Sexual Harassment in Employment)

BP 4119.131/4219.131/4319.131 (e)

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Legal Reference:

EDUCATION CODE

200-240 Prohibition of discrimination on the basis of sex, especially:

215.5 Sexual harassment, defined

216.6 Sexual harassment policy

230 Particular practices prohibited

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

LABOR CODE

1101 Political activities of employees 1102.1 Discrimination: sexual orientation

UNITED STATES CODE, TITLE 42

2000d & 2000e et seq.

Title VI & Title VII, Civil Rights Act of 1964 as amended

2000h-2 et seq.

Title IX, 1972 Education Act Amendments

Meritor Savings Bank, FSB v. Vinson et al.

86 Daily Journal D.A.R. 2130

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ADOPTED: September 11, 1995

REVISED: February 11, 2003