

# CSBA Sample Board Policy

All Personnel

BP 4119.11(a)

4219.11

SEXUAL HARASSMENT

4319.11

Note: Education Code 231.5, 2 CCR 11023, and 34 CFR 106.8 mandate the district to have a written policy on sexual harassment. As part of this mandate, the district also should adopt a sexual harassment policy related to students; see BP/AR 5145.7 - Sexual Harassment **and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.**

Sexual harassment is prohibited pursuant to Title VII of the Civil Rights Act of 1964 (42 USC 2000e-2000e-17) and/or Title IX of the Education Amendments of 1972 (20 USC 1681-1688; 34 CFR 106.1-106.82), as well as the California Fair Employment and Housing Act (Government Code 12900-12996). Whether a complaint of sexual harassment is addressed through federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, or procedures adopted pursuant to 2 CCR 11023 is dependent on whether the alleged conduct meets the more stringent federal definition of sexual harassment or the state definition. **In order to meet the applicable timelines, in some instances it may be necessary to review a complaint under both procedures concurrently.** See the accompanying administrative regulation, AR 4030 - Nondiscrimination in Employment, and AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures.

Pursuant to 2 CCR 11034, the district may be liable for sexual harassment committed by a supervisor, coworker, or a third party. Pursuant to Government Code 12940, employers may also be held liable for sexual harassment committed against their workers by clients, customers, or other third parties if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

The following policy shall apply to all district employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the district.

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.

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

*(cf. 4030 - Nondiscrimination in Employment)*

Note: Government Code 12940 clarifies that sexual harassment includes harassment based on sex, gender, pregnancy, childbirth, or related medical conditions.

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

## SEXUAL HARASSMENT (continued)

Note: Federal and state courts have provided guidance that may help employers avoid liability or mitigate damages in sexual harassment cases. In Department of Health Services v. Superior Court (McGinnis), the California Supreme Court outlined measures that may constitute mitigating factors in the assessment of damages, including establishing anti-harassment policies, communicating those policies to employees, consistently enforcing the policies, preserving the confidentiality of employees who report harassment, and preventing retaliation against reporting employees. The U.S. Supreme Court in Burlington Industries v. Ellerth held that, for certain claims under federal law, an employer may defend against sexual harassment claims by proving that (1) reasonable care was exercised to prevent and promptly correct any sexually harassing behavior, and (2) the employee (victim) failed to take advantage of the preventive and corrective opportunities provided by the employer.

Pursuant to Government Code 12950.1, as amended by SB 778 (Ch. 215, Statutes of 2019), employers with five or more employees are required to provide sexual harassment training to supervisory and nonsupervisory employees. See the accompanying administrative regulation for timelines and training requirements.

Items #1-4 below reflect the courts' guidance and Government Code 12950.1, and should be modified to reflect district practice.

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
3. Ensuring prompt, thorough, fair, and equitable 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

Note: The following optional paragraph reflects a recommendation of the U.S. Equal Employment Opportunity Commission's informal guidance Promising Practices for Preventing Harassment and may be revised to reflect district practice.

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 (continued)

### Sexual Harassment Reports and Complaints

Note: 34 CFR 106.8, as amended by 85 Fed. Reg. 30026, requires the district to designate at least one employee to coordinate its responsibilities under Title IX, who must be referred to as the Title IX Coordinator. See the accompanying administrative regulation.

34 CFR 106.44, as added by 85 Fed. Reg. 30026, requires the district, when there is actual knowledge of sexual harassment, to respond promptly in a manner that is not unreasonable in light of the known circumstances and in compliance with Title IX regulations. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school. For this reason, the district should train all employees regarding the reporting process.

In Faragher v. City of Boca Raton, one of the factors relied on by the U.S. Supreme Court in finding liability for harassment by a supervisor was the failure of the policy to provide an assurance to its employees that harassing supervisors may be bypassed in registering complaints.

District employees who feel that they have been sexually harassed in the performance of their district responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to their direct supervisor, a district administrator, or the district's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall promptly notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint **or allegation** is addressed through **either** AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures **for complaints meeting the Title IX definition of sexual harassment** or AR 4030 - Nondiscrimination in Employment **for complaints meeting the state definition**, as applicable, **and shall offer supportive measures to the complainant. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets the requirements of AR 4030.**

*(cf. 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaints)*

**The Title IX Coordinator and shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.**

Note: In addition to district discipline imposed on employees who engage in sexual harassment, Government Code 12940 provides that such employees may be held personally liable in a court of law for any damage to the victim(s).

## SEXUAL HARASSMENT (continued)

Upon investigation of a sexual harassment complaint, any district employee found to have engaged or participated in sexual harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

*(cf. 4117.7/4317.7 - Employment Status Reports)*  
*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

### *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 *Sexual harassment; distribution of information*

12950.1 *Sexual harassment training*

#### LABOR CODE

1101 *Political activities of employees*

1102.1 *Discrimination: sexual orientation*

#### CODE OF REGULATIONS, TITLE 2

11009 *Employment discrimination*

11021 *Retaliation*

11023 *Harassment and discrimination prevention and correction*

11024 *Sexual harassment training and education*

11034 *Terms, conditions, and privileges of employment*

#### CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in elementary and secondary education programs*

#### UNITED STATES CODE, TITLE 20

1681-1688 *Title IX of the Education Amendments of 1972*

#### UNITED STATES CODE, TITLE 42

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

#### CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.9 *Nondiscrimination on the basis of sex in education programs or activities*

106.51-106.82 *Nondiscrimination on the basis of sex in employment in education programs or activities*

#### 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*

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

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

BP 4119.11(e)  
4219.11  
4319.11

## SEXUAL HARASSMENT (continued)

### *Management Resources:*

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS  
*Promising Practices for Preventing Harassment, November 2017*

### 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>*

(3/18 7/20) 10/20