

Personnel

SEXUAL HARASSMENT IN EMPLOYMENT

The Board of Education is committed to providing a safe work environment that is free of harassment, discrimination, and intimidation. The Board prohibits sexual harassment against District employees and retaliatory behavior or action against any individual who complains, testifies, or otherwise participates in the complaint processes established for the purpose of this policy. This policy shall apply to all District employees and, when applicable, shall also apply to job applicants, unpaid interns, volunteers, and individuals providing services pursuant to a contract.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 1240 - Volunteer Assistance)

(cf. 3312 - Contracts)

(cf. 3600 - Consultants)

(cf. 4111/4211/4311 - Recruitment and Selection)

Sexual Harassment under District Policy

For purposes of this policy and Board Policy/Administrative Regulation 4030 – Nondiscrimination in Employment, “sexual harassment” means any unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, visual, or physical conduct of a sexual nature, whether it occurs between individuals of the same sex or individuals of opposite sex, under any of the following conditions (Ed. Code § 212.5; 5 C.C.R. § 4916; Gov. Code § 12940; 2 C.C.R. §§ 11029-11034):

1. Submission to the conduct is explicitly or implicitly made a term or a condition of the employee's employment;
2. Submission to, or rejection of, the conduct by the employee is used as the basis of an employment decision affecting the employee;
3. The conduct has the purpose or effect of having a negative impact upon the employee's work, or progress, or has the purpose or effect of creating an intimidating, hostile, or offensive working environment. The conduct is sufficiently severe, persistent, pervasive or objectively offensive, so as to create a hostile or abusive working environment or to limit the employee's ability to participate in or benefit from the terms or conditions of the employee's employment; and/or
4. Submission to, or rejection of, the conduct by the employee is used as the basis for any decision affecting the employee regarding benefits and services, honors, programs, or activities available at or through the District.

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

Examples of conduct that might constitute sexual harassment include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly familiar conversations; pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, or innuendoes; derogatory comments; sexually degrading descriptions; the spreading of sexual rumors;
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit e-mails; displaying sexually suggestive objects; and/or
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in an overly familiar or sexual way; cornering, blocking, leaning over, or impeding normal movements.

Any act of retaliation against an individual who reports a violation of this policy or who participates in an investigation into alleged conduct prohibited by this policy, is prohibited.

Sexual Harassment under Title IX

For purposes of Administrative Regulation 4119.12 – Title IX Sexual Harassment Complaint Procedures, “sexual harassment” means conduct, on the basis of sex, that satisfies one or more of the following (34 C.F.R. § 106.30):

1. A District employee conditioning the provision of an aid, benefit, or service of the District on the employee's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable individual to be so severe, pervasive, and objectively offensive that it effectively denies the employee equal access to the terms and/or conditions of employment; and/or
3. “Sexual assault” as defined in United States Code, title 20, section 1092(f)(6)(A)(v), “dating violence” as defined in United States Code, title 34, section 12291(a)(10), “domestic violence” as defined in United States Code, title 34, section 12291(a)(8), or “stalking” as defined in United States Code, title 34, section 12291(a)(30).

“*Sexual assault*” means actual or intentional physical sexual acts against an individual without consent that may include: rape, rape and seduction, sodomy, lewd and lascivious acts, oral copulation, sexual penetration, sexual battery, and sexual assault, as defined under Education Code section 48900(n) and Penal Code sections 261, 266c, 286, 288, 288a, 289 and 243.4.

“*Dating violence*” means violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim (34 U.S.C. § 12291(a)(10)).

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by an individual with whom the victim shares a child in common, by an individual who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws (Ed. Code § 48900, subd. (n)).

“Stalking” means engaging in a course of conduct directed at a specific individual that would cause a reasonable individual to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress (34 U.S.C. § 12291(a)(30)).

"Without consent" or "against that individual's will" may include force, duress, violence, fear of immediate harm, or an individual's inability to consent.

Reporting Conduct

All District employees, job applicants, unpaid interns, volunteers, persons providing services pursuant to a contract, students, parents, and other community members are encouraged to report incidents of sexual harassment, or related retaliation, to the Superintendent, the Title IX Coordinator identified below, or their respective designees.

Title IX Coordinator

The District designates the position/individual identified below as responsible for coordinating its efforts to comply with Title IX of the Education Amendments of 1972, as well as to oversee, investigate, and/or resolve complaints alleging sexual harassment in accordance with Administrative Regulation 4030 – Nondiscrimination in Employment and Administrative Regulation 4119.12 – Title IX Sexual Harassment Complaint Procedures.

Kanitra Lopez Legal Compliance Specialist/Title IX Coordinator Human Resources 9510 Elk Grove-Florin Road Elk Grove, CA 95624 T: (916) 686-7795 ext. 67159 E: TitleIX@egusd.net

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

Complaint Procedures

All complaints containing an allegation that a District employee, or when applicable a job applicant, unpaid intern, volunteer, or person providing services to the District pursuant to a contract, was subject to conduct meeting the definition of sexual harassment set forth in the Title IX of the Education Amendments of 1972 (34 C.F.R. § 106.30), as defined above, or related retaliation, shall be addressed in accordance with Administrative Regulation 4119.12 – Title IX Sexual Harassment Complaint Procedures.

All complaints containing an allegation that a District employee, or when applicable a job applicant, unpaid intern, volunteer, or person providing services to the District pursuant to a contract, was subject to conduct meeting the definition of sexual harassment under District Policy, as defined above, or related retaliation, shall be addressed in accordance with Administrative Regulation 4030 – Nondiscrimination in Employment.

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.12 - Title IX Sexual Harassment Complaints)

Disciplinary Action

The District shall not impose any disciplinary sanction or other actions against an individual, other than supportive measures, until the appropriate complaint procedure has been completed and a determination of responsibility has been made.

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)
(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

Where an employee is found to have engaged in sexual harassment, or related retaliation, in violation of this policy, the District shall take appropriate disciplinary actions, up to and including dismissal, in accordance with applicable law and the applicable collective bargaining agreement.

(cf. 4117.7 - Employment Status Report)
(cf. 4118/4218 - Dismissal/Suspension/Disciplinary Action)
(cf. 4119.11 - Sexual Harassment)

Where a student is found to have engaged in sexual harassment, or related retaliation, in violation of this policy, the District shall take appropriate disciplinary actions and/or other appropriate corrective measures or interventions. For students in grades 4-12, 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.

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

(cf. 5144 - Discipline)

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

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

Notifications

The Superintendent or designee shall notify employees that the District does not discriminate on the basis of sex, as required by Title IX, that the Title IX nondiscrimination requirement extends to employment, and that inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator and/or to the Assistant Secretary for Civil Rights, U.S. Department of Education (34 C.F.R. § 106.8; 34 C.F.R. § 106.45).

A copy of Board Policy 4119.11, Administrative Regulation 4030, and Administrative Regulation 4119.12 shall (Ed. Code § 231.5; 34 C.F.R. § 106.8):

1. Be displayed in a prominent location in the main administrative building, District office, or other area of the school where notices of District rules, regulations, procedures, and standards of conduct are posted.
2. Be provided to every District employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired.
3. Appear in any school or District publication that sets forth the school's or District's comprehensive rules, regulations, procedures, and standards of conduct.
4. Be publicly posted on the District's website, if the District has one.

All employees shall receive either a copy of the information sheet prepared by the California Department of Fair Employment and Housing (DFEH) or the District that contains, at a minimum, components on (Gov. Code § 12950):

1. The illegality of sexual harassment.
2. The definition of sexual harassment under applicable state and federal law.
3. A description of sexual harassment, with examples.
4. The District's complaint process available to the employee.
5. The legal remedies and complaint process available through the DFEH and the Equal Employment Opportunity Commission (EEOC).
6. Directions on how to contact the DFEH and the EEOC.

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

7. The protection against retaliation provided by California Code of Regulations, title 2, section 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by the DFEH and the EEOC.

In addition, the District shall post, in a prominent and accessible location, the DFEH poster on discrimination in employment and the illegality of sexual harassment and the DFEH poster regarding transgender rights (Gov. Code § 12950).

Preventative Measures

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 regulations.
2. Publicizing and disseminating the District's sexual harassment policy and regulations to employees and others to whom the policy may apply.
3. Ensuring prompt, thorough, fair, and equitable investigation of complaints.
4. Providing supportive measures to both the complainant and the individual alleged to have perpetrated the conduct (respondent), as appropriate, including but not limited to interim separation of the complainant and the respondent.
5. Taking timely and appropriate corrective action(s), including but not limited to subsequent monitoring of developments.

The Superintendent or designee shall periodically evaluate the effectiveness of the District's strategies to prevent and address sexual harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether sexual 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 tools for receiving feedback on systems and/or processes. As necessary, changes shall be made to the sexual harassment policy, complaint procedures, or training.

Training

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours, and nonsupervisory employees receive at least one hour, of classroom or other effective interactive training and education regarding sexual harassment. All newly hired employees or employees promoted to a supervisory position shall receive training within six months of their assumption of the new position (Gov. Code § 12950.1).

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

A supervisory employee is any employee having the authority, in the interest of the District, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or to effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment (Gov. Code § 12926).

(cf. 4300 – Management, Supervisor And Confidential Personnel)

Such training may be completed by employees individually or as part of a group presentation; may be completed in shorter segments as long as the applicable hourly requirement is met; and may be provided in conjunction with other training provided to the employees. The training shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation (Gov. Code § 12950.1).

The District's sexual harassment training and education program shall include, but is not limited to, the following (Gov. Code § 12950.1; 2 C.C.R. § 11024):

1. Information and practical guidance regarding the federal and state laws concerning the prohibition, prevention, and correction of sexual harassment.
2. The types of conduct that constitute as sexual harassment.
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability.
4. Strategies to prevent sexual harassment in the workplace.
5. Supervisor's obligation to report sexual harassment, discrimination, and retaliation of which they become aware.
6. Practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources.
7. The limited confidentiality of the complaint process.
8. Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.
9. Steps necessary to take appropriate remedial measures to correct harassing behavior, which includes the District's obligation to conduct an effective workplace investigation of a sexual harassment complaint.

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

10. What to do if the supervisor is personally accused of sexual harassment.
11. The essential elements of the District's anti-harassment policy, and how to use the policy if a sexual harassment complaint is filed.
12. Employees shall receive a copy of the District's sexual harassment policy and administrative regulations, which they shall read and acknowledge that they have received.
13. Information, including practical examples, of harassment based on gender identity, gender expression, and sexual orientation.
14. Prevention of abusive conduct, including a review of the definition and elements of abusive conduct pursuant to Government Code section 12950.1, the negative effects that abusive conduct has on the victim and others in the workplace, the detrimental consequences of this conduct on employee productivity and morale, and that a single act does not constitute abusive conduct unless the act is severe or egregious.

The Superintendent or designee shall retain, for at least two years, the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider (2 C.C.R. §11024).

Record-Keeping

In accordance with law, the Superintendent or designee shall maintain a record of all written complaints of harassment or discrimination, and related retaliation, to enable the District to monitor, address, and prevent repetitive behavior, in accordance with the District's applicable complaint procedure(s).

(cf. 3580 - District Records)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

Additional Information

Additional information about this policy, your rights and responsibilities, or about how to file a complaint can be obtained by contacting the Legal Compliance Specialist, legalcompliance@egusd.net, 916-686-7795, Elk Grove Unified School District, 9510 Elk Grove-Florin Road, Elk Grove, CA 95624, or one of the District's Title IX Coordinators.

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

Legal Reference:

EDUCATION CODE

221.5 *et seq.* Sex Equity in Education Act

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, especially:

12940 Prohibited discrimination

12950 Sexual harassment; distribution of information

12950.1 Sexual harassment training

CODE OF REGULATIONS, TITLE 2

11008 Definitions

11009 Employment discrimination

11016 Pre-employment practices

11021 Retaliation

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education

11029-11034 Sex discrimination

11035-11051 Pregnancy, childbirth or related medical conditions

11052-11058 Marital status discrimination

11087-11097 California Family Rights Act and New Parent Leave Act

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

106.1-106.82 Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance

SEXUAL HARASSMENT IN EMPLOYMENT (continued)

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:

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>

Policy

ELK GROVE UNIFIED SCHOOL DISTRICT

Elk Grove, California

adopted: December 3, 1984
revised: November 4, 1989
revised: June 21, 1993
revised: April 6, 1998
revised: October 16, 2012
revised: June 11, 2019
revised: December __, 2020