

# MODESTO CITY SCHOOLS

## Board Policy

BP 5145.7

### STUDENTS

#### 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 ~~students~~ **any student** who ~~feel~~ **feels** that ~~they~~ **are** ~~he/she is~~ being or **have** ~~has~~ been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult, or who
- **have** ~~has~~ experienced off-campus sexual harassment that has a continuing effect on
- campus, to immediately contact ~~their~~ **his/her** teacher, the principal, **the district's Title IX Coordinator**, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the **Title IX Coordinator**.
- ~~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)*

*(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 **Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR 5145.71 - Title IX Sexual Harassment Complaint Procedures or BP/AR 1312.3 - Uniform Complaint Procedures, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint**

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procedure may still be subject to consideration under state law, the Title IX Coordinator shall ensure that any implementation of AR 5145.71 concurrently meets the requirements of BP/AR 1312.3.

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

The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the policy.

### 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 **when 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

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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 ~~respond to~~ **stop any** harassment, prevent recurrence, and address any continuing effect on students
- 6. Information about the district's ~~procedures~~ **procedure** for investigating complaints and the person(s) to whom a report of sexual harassment should be made
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 **implement** —→ **supportive** ~~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 Actions

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 **completion of an** 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 subject to disciplinary action. For students in grades 4-12,

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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)

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

→ Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall ~~be subject to disciplinary action, up to and including dismissal,~~ have their employment terminated in accordance with law and the applicable collective bargaining agreement.

(cf. 4117.7/4317.7 - Employment Status Report)

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)(N/A)

(cf. 4119.11 4219.11/4319.11 Sexual Harassment)

### Record-Keeping

→ **In accordance with law and district policies and regulations, 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)

#### Legal References:

##### EDUCATION CODE

200-262.4 **Educational equity**; Prohibition of discrimination on the basis of sex

48900 Grounds for suspension and expulsion

48900.2 Additional grounds for suspension and 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 act of willful misconduct of minor

##### GOVERNMENT CODE

12950.1 Sexual harassment training

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#### **Legal References (cont.):**

##### **CODE OF REGULATIONS, TITLE 5**

4600-~~4687~~ **4670** 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 (**FERPA**) of 1974

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

#### **Management Resources:**

##### **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

##### **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**

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

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

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

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