

MODESTO CITY SCHOOLS

Administrative Regulation

AR 5145.7

STUDENTS

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 compliance officer(s) may be contacted at:~~

STUDENT TO STUDENT:

Brad Goudeau
Associate Superintendent, Educational Services
Title IX Compliance Officer and Equity Officer
426 Locust Street, Modesto, CA 95351
(209) 492-1454
goudeau.b@mes4kids.com

EMPLOYEE TO STUDENT/STUDENT TO EMPLOYEE:

Mike Henderson
Associate Superintendent, Human Resources
Title IX Compliance Officer
426 Locust Street, Modesto, CA 95351
(209) 492-3122
henderson.m@mes4kids.com

~~(cf. 1312.3—Uniform Complaint Procedures)~~

Definitions

→ **Prohibited S**exual 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

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opposite sex in the educational setting, under any of the following conditions:
(Education Code 212.5; 5 CCR 4916)

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

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.

(cf. 5131 – Conduct)

(cf. 5131.2 – Bullying) (N/A)

(cf. 5137 – Positive School Climate)

(cf. 5145.3 – Nondiscrimination/Harassment)

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

For purposes of applying the complaint procedures specified in Title IX of the Education Amendments of 1972, sexual harassment is defined as any of the following forms of conduct that occurs in an education program or activity in which a District school exercises substantial control over the context and respondent: (34 CFR 106.30, 106.44)

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1. **A District employee conditioning the provision of a District aid, benefit, or service on the student's participation in unwelcome sexual conduct**
2. **Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the District's education program or activity**
3. **Sexual assault, dating violence, domestic violence, or stalking as defined in 20 USC 1092 or 34 USC 12291**

Examples of Sexual Harassment

Examples of types of conduct which are prohibited in the District and which may constitute sexual harassment **under state and/or federal law, in accordance with the definitions above**, 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
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class

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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

Title IX Coordinator/Compliance Officer

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 in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures, as well as to oversee, investigate, and/or resolve sexual harassment complaints processed under AR 1312.3 - Uniform Complaint Procedures. The Title IX Coordinator(s) may be contacted at:

STUDENT TO STUDENT:

Brad Goudeau
Associate Superintendent, Educational Services
Title IX Compliance Officer and Equity Officer
426 Locust Street, Modesto, CA 95351
(209) 492-1454
goudeau.b@mcs4kids.com

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Mike Henderson
Associate Superintendent, Human Resources
Title IX Compliance Officer
426 Locust Street, Modesto, CA 95351
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henderson.m@mcs4kids.com

(cf. 1312.3 – Uniform Complaint Procedures)

Superintendent or designee shall notify students and parents/guardians that the District does not discriminate on the basis of sex as required by Title IX 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 CFR 106.8)

Notifications

The District shall notify students and parents/guardians of the name or title, office address, email address, and telephone number of the District's Title IX Coordinator. (34 CFR 106.8)

- 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)**
- 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)**

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3. Be summarized on a poster which shall be prominently and conspicuously displayed in each bathroom and locker room at each school. The poster may be displayed in public areas that are accessible to and frequented by students, including, but not limited to, classrooms, hallways, gymnasiums, auditoriums, and cafeterias. The poster shall display the rules and procedures for reporting a charge of sexual harassment; the name, phone number, and email address of an appropriate school employee to contact to report a charge of sexual harassment; the rights of the reporting student, the complainant, and the respondent; and the responsibilities of the school. (Education Code 231.6)
4. Be posted, along with the name or title and contact information of the Title IX Coordinator, in a prominent location on the District's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6; 34 CFR 106.8)
5. Be provided as part of any orientation program conducted for new and continuing students at the beginning of each quarter, semester, or summer session (Education Code 231.5)
6. 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)
7. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to students or parents/guardians (34 CFR 106.8)
- 8. Be provided to employees and employee organizations

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The Superintendent or designee shall also post the definition of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the District's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.6)

Reporting Process and Complaint Investigation and Resolution**Reporting Complaints**

- ~~Any student who believes that he/she~~ **A student or parent/guardian who believes that the student** 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 ~~a his/her~~ **the District's Title IX Coordinator**, or any other available school employee. Within one school day of receiving such a report, the **principal or other** school employee shall forward the report to the **principal or the District's Title IX Coordinator**.
- ~~Any 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 ~~the his/her~~ **the his/her** observation to the principal or **Title IX Coordinator**. ~~a District compliance officer.~~ The **report by the employee** shall
- **be made regardless of** ~~take these actions,~~ whether **or not** the alleged victim files a **formal** complaint **or requests confidentiality**.

- When a report or complaint of sexual harassment involves off-campus conduct, the
- **Title IX Coordinator** ~~principal~~ shall assess whether the conduct may create or contribute to the creation of a hostile school environment. **If the Title IX**
 - **Coordinator** ~~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 **Title IX**
- **Coordinator, principal, or compliance officer** shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with
 - **applicable District complaint procedures.** ~~the District's uniform~~

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- ~~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.~~

Complaint Procedures

All complaints and allegations of sexual harassment by and against students shall be investigated and resolved in accordance with law and District procedures. The Title IX Coordinator shall review the allegations to determine the applicable procedure for responding to the complaint. All complaints that meet the definition of sexual harassment under Title IX shall be investigated and resolved in accordance with AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to BP/AR 1312.3 - Uniform Complaint Procedures.

- ~~If sexual harassment is found following~~ If a complaint of sexual harassment is initially submitted to the principal, he/she shall, within two school days, forward the report to the Title IX Compliance Officer to initiate investigation of the complaint.
- ~~For student to student complaints of sexual harassment, the Title IX Compliance Officer may designate an Assistant Superintendent or Senior Director to conduct the investigation. For employee to student or student to employee complaints of sexual harassment, the compliance officer may designate a Senior Director or other appropriate supervisor to conduct the investigation.~~
- ~~The Title IX Compliance Officer, designated Assistant Superintendent, Senior Director, or designated supervisor shall contact the complainant, investigate, and resolve the complaint in accordance with law and District procedures specified in AR 1312.3. The final written determination letter shall be signed by the Title IX Compliance Officer.~~

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- 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)

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~~ Title IX Coordinator 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 ~~Title IX Coordinator~~, District will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students.

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(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 **Coordinator** Title IX Coordinator or compliance officer, shall take prompt action to stop the sexual harassment, prevent recurrence, implement remedies, and address any continuing effects~~ compliance officer, and 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 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)

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~~(ef. 5145.6 – Parental Notifications)~~

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.~~

~~(ef. 1113 – District and School Web Sites)~~

~~(ef. 1114 – District Sponsored Social Media)~~

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~~

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

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Legal References (cont.):

GOVERNMENT CODE

12950.1 Sexual harassment training

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

2016Dear 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

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Management Resources (cont.):

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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