

MODESTO CITY SCHOOLS

Administrative Regulation

—————→ AR 4119.12~~14~~/4219.12~~14~~/4319.12~~14~~

ALL PERSONNEL

—————→ **Title IX** Complaint Procedures for Sexual Harassment ~~**Complaint Procedures**~~ in Employment

1. Coordinator for Complaints of Sexual Harassment in Employment

The Board of Education designates the following person as Coordinator for Complaints of Sexual Harassment in Employment to coordinate receipt and processing of complaints under this policy and procedure, including alleged violations of Title IX and S 504.

Associate Superintendent, Human Resources
Modesto City Schools' Administrative Offices
426 Locust Street
Modesto, CA 95351-2699
(209) 574-1606

2. Definitions

Complainant: An employee or applicant for employment who files a complaint under this policy.

Respondent: An individual charged with engaging in sexual harassment as defined in District policy and/or administrative regulation.

Days: As used in this policy and procedure, "days" means days in which the employee is required to work. Timelines may be extended by mutual agreement.

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—————→ AR 4119.12~~14~~/4219.12~~14~~/4319.12~~14~~ (a)

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The complaint procedures described in this administrative regulation shall be used to address any complaint governed by Title IX of the Education Amendments of 1972 alleging that a District employee, while in an education program or activity in which a District school exercises substantial control over the context and respondent, was subjected to one or more of the following forms of sexual harassment: (34 CFR 106.30, 106.44)

1. A District employee conditioning the provision of a District aid, benefit, or service on a person'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 person 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

All other sexual harassment complaints or allegations shall be investigated and resolved in accordance with AR 4030 - Nondiscrimination in Employment. The determination of whether the allegations meet the definition of sexual harassment under Title IX shall be made by the District's Title IX Coordinator.

Because the complainant has a right to pursue a complaint under AR 4030 for any allegation that is dismissed or denied under the Title IX complaint procedure, the Title IX Coordinator shall ensure that all requirements and timelines for AR 4030 are concurrently met while implementing the Title IX procedure.

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Reporting Allegations/Filing a Formal Complaint

→ 3. Complaint

~~The following procedure shall be followed in sexual harassment complaints by an employee (for Modesto Teachers Association and California School Employees Association members, a grievance may be filed as an alternative to this procedure). The complainant, the accused, and employee(s) interviewed about the complaint have a right to union representation.~~

~~The timelines for the regular grievance procedure are tolled if a Modesto Teacher Association or California School Employees Association member chooses to pursue a complaint through the following District procedure.~~

~~If a complaint is withdrawn or found to be invalid, the complaint and findings shall not be referred to in the employee's personnel file. There shall be no retaliation against any individual for filing a complaint or providing information regarding a sexual harassment complaint. If a complaint is found valid, the District will take corrective action designed to end the harassment in accordance with the principles of just cause discipline. The District will inform the complainant in writing that it has taken action designed to correct the problem. Otherwise, all information regarding any proposed or actual disciplinary action shall be kept confidential by the District Complaint Procedure.~~

→ 4. Informal Complaint Procedure

~~When an employee has a complaint as defined in this policy, he or she may file an informal complaint with his or her immediate supervisor, site administrator, or other District administrator. (Any such complaint against the Associate Superintendent, Personnel should be directed to the Superintendent; any such complaint against the Superintendent should be directed to the President of~~

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~~the Board of Education.) An informal complaint must be initiated within thirty (30) working days from the time an employee knew or reasonably should have known of the alleged sexual harassment event or condition prompting the complaint. The Associate Superintendent, Personnel should be contacted when the informal complaint is made to any District administrator.~~

~~The Associate Superintendent, Personnel, will assign a District administrator to investigate the allegations in the informal complaint in a manner designed to protect the privacy of all parties to the greatest extent practicable. The administrator designated by the Associate Superintendent, Personnel will attempt to resolve the matter within thirty (30) days from receipt of the informal complaint.~~

—————→ 5. Formal Written Complaint Procedure

—————→ Step 1

~~If the complainant is not satisfied with the resolution of the informal complaint, the complainant may file a formal written complaint with the Associate Superintendent, Personnel. The Associate Superintendent, Personnel may designate a District administrator to do the level 1 investigation. (Any such complaint against the Associate Superintendent, Personnel should be directed to the Superintendent; any such complaint against the Superintendent should be directed to the President of the Board of Education and the following procedural processes should be modified accordingly.) The following procedures must be followed:~~

- ~~a. formal complaint must be filed within sixty (60) days of the time the informal attempt was made to settle the complaint.~~

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- b. ~~formal complaint should be on the District's Sexual Harassment Complaint Form and contain all the following information known to the complainant:~~
- (1) ~~the complainant's name, address, work and home telephone numbers;~~
 - (2) ~~the name of the person or persons who committed the alleged sexual harassment act(s);~~
 - (3) ~~a description of the alleged sexual discriminatory act(s);~~
 - (4) ~~a specific description of the time, place, nature, participants in, and witnesses to the alleged sexual discriminatory act(s);~~
 - (5) ~~other pertinent information which may assist the investigation and resolution of the complaint; and~~
 - (6) ~~the complainant's suggested remedy for resolution of the complaint.~~

—————→ Step 2

~~If the complaint is not resolved to the complainant's satisfaction in Step 1, the complainant may appeal that resolution to the Associate Superintendent, Personnel, using the following procedures:~~

- a. ~~complainant must submit his/her written complaint to the Associate Superintendent, Personnel within ten (10) working days of the complainant's receipt of the Step 1 decision.~~

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—————→ ~~b. Associate Superintendent, Personnel/designee, the complainant, and the person who investigated the Step 1 complaint and prepared the written response to the complainant, will meet to discuss the complaint.~~

~~c. Associate Superintendent, Personnel/designee shall provide a written decision within ten (10) working days of this meeting. Copies of the decision shall be provided to all parties present at the meeting.~~

—————→ ~~6. Appeal to the Board of Education~~

~~If the complainant is not satisfied with the decision of the Associate Superintendent, Personnel/designee, he or she may file a written appeal with the Board of Education. This written appeal must be filed within fifteen (15) working days from the date of the Associate Superintendent Personnel/designee's written decision. The Superintendent or designee shall provide the Board with copies of all pertinent documents, including the written complaint and the Associate Superintendent, Personnel/designee's written decision.~~

~~Consistent with the Board of Education's agenda deadlines and open meeting law requirements, the Board of Education shall meet in closed session to consider the complainant's appeal. At the next regularly scheduled Board meeting, the Board shall issue their decision.~~

—————→ ~~7. Other Options~~

~~If the complainant is not satisfied with the Board's decision, the complainant may file a complaint with an appropriate state or federal enforcement agency (e.g., State Department of Education, U.S. Department of Education, State Department of Fair Employment and Housing, Equal Employment Opportunity Commission). Civil law and grievance remedies may be available.~~

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An employee who is the alleged victim of sexual harassment may submit a report of sexual harassment to the District's Title IX Coordinator using the contact information listed in AR 4119.11/4219.11/4319.11 - Sexual Harassment or to the employee's direct supervisor or other District administrator, who shall forward the report to the Title IX Coordinator within one **(1)** day of receiving the report.

Upon receiving such a report, the Title IX Coordinator shall inform the complainant of the right to file a formal complaint and the process for filing a formal complaint.

A formal complaint, with the complainant's physical or digital signature, may be filed with the Title IX Coordinator in person, by mail, by email, or by any other method authorized by the District. (34 CFR 106.30)

Even if the alleged victim chooses not to file a formal complaint, the Title IX Coordinator shall file a formal complaint in situations when a safety threat exists. In addition, the Title IX Coordinator may file a formal complaint in other situations as permitted under the Title IX regulations, including as part of the District's obligation to not be deliberately indifferent to known allegations of sexual harassment. In such cases, the Title IX Coordinator shall provide the alleged victim notices as required by the Title IX regulations at specific points in the complaint process.

The Title IX Coordinator, investigator, decision-maker, or a facilitator of an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Such persons shall receive training in accordance with 34 CFR 106.45. (34 CFR 106.45)

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Supportive Measures

Upon receipt of a report of Title IX sexual harassment, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures and shall consider the complainant's wishes with respect to the supportive measures implemented.

Supportive measures shall be offered as appropriate, as reasonably available, and without charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures shall be nondisciplinary, nonpunitive, and not unreasonably burden the other party, including measures designed to protect the safety of all parties or the District's educational environment or to deter sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines, modifications of work schedules, mutual restrictions on contact, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the campus. (34 CFR 106.30, 106.44)

The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the District's ability to provide the supportive measures. (34 CFR 106.30)

Emergency Removal

If a District employee is the respondent, the employee may be placed on administrative leave during the pendency of the formal complaint process. (34 CFR 106.44)

If the respondent is a student, the District may, on an emergency basis, remove the student from the District's education program or activity, provided that the District conducts an individualized safety and risk analysis, determines that removal is justified due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations, and provides the student with notice and an opportunity to challenge the decision immediately following the

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removal. This authority to remove a student does not modify a student's rights under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973. (34 CFR 106.44)

Dismissal of Complaint

The Title IX Coordinator shall dismiss a formal complaint if the alleged conduct would not constitute sexual harassment as defined in 34 CFR 106.30 even if proved. The Title IX Coordinator shall also dismiss any complaint in which the alleged conduct did not occur in the District's education program or activity or did not occur against a person in the United States, and may dismiss a formal complaint if the complainant notifies the District in writing that the complainant would like to withdraw the complaint or any allegations in the complaint, the respondent is no longer employed by the District, or sufficient circumstances prevent the District from gathering evidence sufficient to reach a determination with regard to the complaint. (34 CFR 106.45)

Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties, and shall inform them of their right to appeal the dismissal of a formal complaint or any allegation in the complaint in accordance with the appeal procedures described in the section "Appeals" below. (34 CFR 106.45)

If a complaint is dismissed, the conduct may still be addressed pursuant to AR 4030 - Nondiscrimination in Employment as applicable.

Informal Resolution Process

When a formal complaint of sexual harassment is filed, the District may offer an informal resolution process, such as mediation, at any time prior to reaching a determination regarding responsibility. The District shall not require a party to participate in the informal resolution process or to waive the right to an investigation and adjudication of a formal complaint. (34 CFR 106.45)

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The District may facilitate an informal resolution process provided that the District: (34 CFR 106.45)

1. Provides the parties with written notice disclosing the allegations, the requirements of the informal resolution process, the right to withdraw from the informal process and resume the formal complaint process, and any consequences resulting from participating in the informal resolution process, including that records will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process.

If the parties voluntarily consent in writing to the informal resolution process, the Title IX Coordinator will assign a District administrator to act as a facilitator, and investigate the allegations in the complaint in a manner designed to protect the privacy of all parties to the greatest extent practicable. The facilitator will attempt to resolve the matter within thirty (30) days of initiation of the informal resolution process.

Written Notice

If a formal complaint is filed, the Title IX Coordinator shall provide the known parties with written notice of the following: (34 CFR 106.45)

1. The District's complaint process, including any informal resolution process.
2. The allegations potentially constituting sexual harassment with sufficient details known at the time, including the identity of parties involved in the incident if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident if known. Such notice shall be provided with sufficient time for the parties to prepare a response before any initial interview.

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~~3. If, during the course of the investigation, new Title IX allegations arise about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator shall provide notice of the additional allegations to the parties.~~

—————→ ~~3~~ 4. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process.

—————→ ~~4~~ 5. The opportunity for the parties to have an advisor of their choice who may be, but is not required to be, an attorney, and the ability to inspect and review evidence.

—————→ ~~5~~ 6. The prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

The above notice shall also include the name of the investigator, facilitator of an informal process, and decision-maker and shall inform the parties that, if at any time a party has concerns regarding conflict of interest or bias regarding any of these persons, the party should immediately notify the Title IX Coordinator.

Investigation Procedures

If a complainant is not satisfied with the resolution of the informal complaint, or if they wish to proceed directly with a formal complaint, the Title IX Coordinator will assign an investigator to conduct the investigation and submit a written report of the findings.

1. The formal complaint must be filed within sixty (60) days of receipt of the resolution of the informal complaint process.

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2. The formal complaint is encouraged to be filed on the District's "Title IX Sexual Harassment Complaint Form," and contain all, or as much of, the following as possible:

- a) the complainant's name, address, work and home telephone numbers;
- b) the name of the person or persons who committed the alleged sexual harassment act(s);
- c) a description of the alleged sexual discriminatory act(s);
- d) a specific description of the time, place, nature, participants in, and witnesses to the alleged sexual discriminatory act(s);
- e) other pertinent information which may assist the investigation and resolution of the complaint; and
- f) the complainant's suggested remedy for resolution of the complaint.

During the investigation process, the District's designated investigator shall: (34 CFR 106.45)

- 1. **Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence**
- 2. **Not restrict the ability of either party to discuss the allegations under investigation with their representative/advocate, or to gather and present relevant evidence**

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3. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
4. Not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding, although the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate
6. Send in an electronic format or hard copy to both parties and their advisors, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, and provide the parties at least ten (10) days to submit a written response for the investigator to consider prior to the completion of the investigative report
7. Objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and determine credibility in a manner that is not based on a person's status as a respondent, or witness
8. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to the determination of responsibility, send to the parties and their advisors, if any, the investigative report in an electronic format or a hard copy, for their review and written response

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Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. (34 CFR 106.45)

Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and laws.

If the complaint is against an employee, rights conferred under an applicable collective bargaining agreement shall be applied to the extent they do not conflict with the Title IX requirements.

Written Decision

The Superintendent shall designate an employee as the decision-maker to determine responsibility for the alleged conduct, who shall not be the Title IX Coordinator or a person involved in the investigation of the matter. (34 CFR 106.45)

After the investigative report has been sent to the parties but before reaching a determination regarding responsibility, the decision-maker shall afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The decision-maker shall issue, and simultaneously provide to both parties, a written decision as to whether the respondent is responsible for the alleged conduct. (34 CFR 106.45)

→ The written decision shall be issued within sixty (60) calendar days of the receipt of the complaint.

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The timeline may be temporarily extended for good cause with written notice to the complainant and respondent of the extension and the reasons for the action. (34 CFR 106.45)

In making this determination, the decision-maker shall use the "preponderance of the evidence" standard for all formal complaints of sexual harassment. (34 CFR 106.45)

The written decision shall include the following: (34 CFR 106.45)

1. Identification of the allegations potentially constituting sexual harassment as defined in 34 CFR 106.30
2. A description of the procedural steps taken from receipt of the formal complaint through the written decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held if the District includes hearings as part of the grievance process
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the District's code of conduct or policies to the facts
5. A statement of, and rationale for, the result as to each allegation, including a decision regarding responsibility, any disciplinary sanctions the District imposes on the respondent, and whether remedies designed to restore or preserve equal access to the District's educational program or activity will be provided by the District to the complainant
6. The District's procedures and permissible bases for the complainant and respondent to appeal

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Appeals

Either party may appeal the District's decision or dismissal of a formal complaint or any allegation in the complaint, if the party believes that a procedural irregularity affected the outcome, new evidence is available that could affect the outcome, or a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome. If an appeal is filed, the District shall: (34 CFR 106.45)

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decision-maker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result
5. Provide the written decision simultaneously to both parties

—————→ An appeal must be filed in writing within ten (10) calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

—————→ A written decision shall be provided to the parties within twenty (20) calendar days from the receipt of the appeal.

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→ Either party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights within one hundred eighty (180) days of the date of the most recently alleged misconduct.

The complainant shall be advised of any civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal antidiscrimination laws, if applicable.

Remedies

When a determination of responsibility for sexual harassment has been made against the respondent, the District shall provide remedies to the complainant. Such remedies may include the same individualized services described above in the section "Supportive Measures," but need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent. (34 CFR 106.45)

Disciplinary Actions

The District shall not impose any disciplinary sanctions or other actions against a respondent, other than supportive measures as described above in the section "Supportive Measures," until the complaint procedure has been completed and a determination of responsibility has been made. (34 CFR 106.44)

When an employee is found to have committed sexual harassment or retaliation, the District shall take appropriate disciplinary action, up to and including dismissal, in accordance with applicable law and collective bargaining agreement.

Record-Keeping

→ The Superintendent or designee shall maintain, for a period of seven (7) years: (34 CFR 106.45)

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1. A record of all reported cases and Title IX investigations of sexual harassment, any determinations of responsibility, any audio or audiovisual recording and transcript if applicable, any disciplinary sanctions imposed, any remedies provided to the complainant, and any appeal or informal resolution and the results therefrom.
2. A record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including the District's basis for its conclusion that its response was not deliberately indifferent, the measures taken that were designed to restore or preserve equal access to the education program or activity, and, if no supportive measures were provided to the complainant, the reasons that such a response was not unreasonable in light of the known circumstances.
3. All materials used to train the Title IX Coordinator, investigator(s), decision-maker(s), and any person who facilitates an informal resolution process. The District shall make such training materials publicly available on its web site, or if the District does not maintain a web site, available upon request by members of the public.

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