

MODESTO CITY SCHOOLS

Administrative Regulation

AR 4119.11/4219.11/4319.11

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Sexual Harassment

This administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

Definitions

Sexual 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, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made against another person of the same or opposite sex in the work or educational setting under any of the following conditions: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.
4. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the District.

Prohibited sexual harassment also includes conduct which, regardless of whether or not it is motivated by sexual desire, is so severe or pervasive as to unreasonably interfere with the victim's work performance or create an intimidating, hostile, or offensive work environment.

ALL PERSONNEL

Sexual Harassment

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)

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

Examples of Sexual Harassment

Examples of actions that might constitute sexual harassment under state or federal law in accordance with the definitions above, in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

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

ALL PERSONNEL

Sexual Harassment

4. Instances of the aforementioned conduct by use of District-owned or personal technology via online and/or virtual environments, such as using social media, and/or inappropriate websites (including pornographic websites – see Board Policy and Administrative Regulation 4040, “Employee Use of Technology”).

The “work and educational setting” also includes situations where the conduct is engaged in outside of work or school but has the purpose or effect of unreasonably interfering with the victim's work or educational performance, or of creating an intimidating, hostile, or offensive work or educational environment. This includes (but is not limited to) instances where such technology is used.

Complainant: An employee, intern, volunteer, 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.

Title IX Coordinator/Compliance Officer

The Board of Education designates the following individual as the responsible employee to coordinate its efforts to comply with Title IX of the Education Amendments of 1972 in accordance with AR 4119.12/4219.12/4319.12 - Title IX Sexual Harassment Complaint Procedures; receive and process complaints; and to oversee, investigate, and resolve sexual harassment complaints processed under AR 4030 - Nondiscrimination in Employment. The Title IX Coordinator may be contacted at:

Mike Henderson
Associate Superintendent, Human Resources
426 Locust Street
Modesto, CA 95351-2699
(209) 574-1606

ALL PERSONNEL

Sexual Harassment

Training

The Superintendent or designee shall ensure that all employees receive training regarding the District's sexual harassment policies when hired and periodically thereafter. The training shall include how to recognize prohibited or harassing conduct, the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the District's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee. The training shall also include information about processes for employees to informally share or obtain information about harassment without filing a complaint.

(cf. 1312.3 – Uniform Complaint Procedures)
(cf. 4030 – Nondiscrimination in Employment)
(cf. 5145.7 – Sexual Harassment)

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 and employees promoted to a supervisory position shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

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 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. (Government Code 12926)

Sexual Harassment

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. (Government Code 12950.1)

ALL PERSONNEL

Sexual Harassment

(cf. 4300 – Administrative and Supervisory Personnel) (N/A)

(cf. 4300 – Management Positions)

The District's sexual harassment training and education program for supervisory employees shall be aimed at assisting them in preventing and effectively responding to incidents of sexual harassment, as well as implementing mechanisms to promptly address and correct wrongful behavior. The training shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws concerning the prohibition, prevention, and correction of sexual harassment.
2. The types of conduct that constitute sexual harassment.
3. Remedies available for victims in civil actions, and potential employer/individual exposure/liability.
4. Strategies to prevent harassment in the work place.
5. A 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 work place situations and other sources.
7. The limited confidentiality of the complaint process.
8. Resources for victims of unlawful harassment, such as to whom they should report any alleged 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 harassment complaint.

ALL PERSONNEL

Sexual Harassment

10. What to do if the supervisor is personally accused of harassment.
11. The essential elements of the District's anti-harassment policy, and how to use the policy if a harassment complaint is filed.
12. Employees shall receive a copy of the District's sexual harassment policy and administrative regulation, which each participant shall read and acknowledge in writing that they have has 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 elements of abusive conduct pursuant to Government Code 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.
15. How to use the policy if a harassment complaint is filed.

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 CCR 11024)

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 CFR 106.8)

ALL PERSONNEL

Sexual Harassment

The District shall notify employees, bargaining units, and applicants for employment of the name or title, office address, email address, and telephone number of the District's Title IX Coordinator. (34 CFR 106.8)

A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)

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. (Education Code 231.5)
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. (Education Code 231.5)

(cf. 4112.9/4212.9/4312.9 – Employee Notifications) (N/A)

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. (Education Code 231.5)
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. (34 CFR 106.8)
5. Be included, along with the name or title and contact information of the Title IX Coordinator, in any handbook provided to employees or employee organizations. (34 CFR 106.8)

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

1. The illegality of sexual harassment.
2. The definition of sexual harassment under applicable state and federal law.

ALL PERSONNEL

Sexual Harassment

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 DFEH and the Equal Employment Opportunity Commission (EEOC).
6. Directions on how to contact DFEH and the EEOC.
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by 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.
(Government Code 12950)

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

ALL PERSONNEL

Sexual Harassment

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 Procedures

All complaints and allegations of sexual harassment by and against employees 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 4119.12/4219.12/4319.12 – Title IX Sexual Harassment Complaint Procedures. Other sexual harassment complaints shall be investigated and resolved pursuant to AR 4030 – Nondiscrimination in Employment.

If sexual harassment is found following an investigation, the Title IX Coordinator, or designee in consultation with the Coordinator, shall take prompt action to stop the sexual harassment, prevent recurrence, and address any continuing effects.

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, Human Resources, should be directed to the Superintendent; any such complaint against the Superintendent should be directed to the President of 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, Human Resources, should be contacted when the informal complaint is made to any District administrator.

The Associate Superintendent, Human Resources, 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, Human Resources, will attempt to resolve the matter within thirty (30) days from receipt of the informal complaint.

ALL PERSONNEL

Sexual Harassment

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, Human Resources. The Associate Superintendent, Human Resources, may designate a District administrator to do the Step 1 investigation. (Any such complaint against the Associate Superintendent, Human Resources, 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. The formal complaint must be filed within sixty (60) days of the time the informal attempt was made to settle the complaint.
- b. The formal complaint should be on the District's Sexual Harassment Complaint Form and contain all the following information known to the complainant:
 - i. the complainant's name, address, work and home telephone numbers;
 - ii. the name of the person or persons who committed the alleged sexual harassment act(s);
 - iii. a description of the alleged sexual discrimination act(s);
 - iv. a specific description of the time, place, nature, participants in, and witnesses to the alleged sexual discrimination act(s);
 - v. other pertinent information which may assist the investigation and resolution of the complaint; and
 - vi. 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, Human Resources, using the following procedures:

ALL PERSONNEL

Sexual Harassment

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

Appeal to the Board of Education

If the complainant is not satisfied with the decision of the Associate Superintendent, Human Resources /designee, the complainant 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, Human Resources/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, Human Resources/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.

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.

AR 4119.11/4219.11/4319.11 (k)

ALL PERSONNEL

Sexual Harassment

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