

PIEDMONT UNIFIED SCHOOL DISTRICT
Board Policy

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SEXUAL HARASSMENT

Requirements and Prohibitions

All members of the school community are expected to show respect and proper regard for the rights and welfare of others. Sexual harassment, like other unlawful, abusive or violent behaviors, disrupts the ability of students to learn, develop, and thrive, and disrupts the ability of educators and staff to teach and advance the District's educational mission.

Students have the right to a safe and secure school environment, and to educational programs and activities that are free of sexually harassing conduct. District employees have the right to a safe and secure workplace.

The Board of Education requires that all students and District employees comply with all applicable laws, including but not limited to laws prohibiting sexual harassment, and all District rules, regulations, and standards of appropriate conduct.

The Board prohibits sexual harassment of any student by other students or District employees. The Board prohibits sexual harassment of any District employee by students or other District employees. (See Board Policies 4030 and 5145.3 for prohibitions on other forms of harassment, discrimination, hate-motivated incidents, hate crimes, hazing, cyberbullying, and other misconduct.)

The Board strongly encourages any student to immediately report suspected sexual harassment. The Board requires that any District employee immediately report suspected sexual harassment. The Board prohibits retaliation against any student or District employee for reporting or attempting to stop suspected sexual harassment.

The Board of Education designates the following individual to: coordinate District efforts to comply with all laws, rules, and regulations protecting students and District employees from sexual harassment; and ensure the timely and thorough investigation of complaints alleging sexual harassment.

Director of Curriculum and Instruction
760 Magnolia Avenue,
Piedmont, CA 94611
(510) 594-2686
cwozniak@piedmont.k12.ca.us

Annual Notification, Education, and Training

At the beginning of each school year, the Superintendent or designee shall provide to students and their parents/guardians: the rules regarding student conduct including the prohibition on sexual harassment; and procedures for filing complaints. The District shall publish these rules and procedures in the Student Handbook and on the District's website, and display the rules and procedures in a prominent location near each school principal's office (Education Code Section 231.5, 48980). Also at the beginning of each school year, the Superintendent or designee shall provide to all District employees: the rules regarding employee conduct including the prohibition on sexual harassment; and procedures for filing complaints.

The District shall provide age-appropriate information to students about: identifying and reporting suspected sexual harassment; protection from retaliation for reporting suspected sexual harassment; and counseling and other support services and resources available to students confronting sexual harassment.

The District shall provide annual training to administrators, teachers, and staff about identifying and reporting suspected sexual harassment and protection from retaliation for reporting suspected sexual harassment.

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PIEDMONT UNIFIED SCHOOL DISTRICT
Administrative Regulation

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PROHIBITING SEXUAL HARASSMENT

I. Compliance Officer

The Board of Education designates the following individual to: coordinate District efforts to comply with all laws, rules, and regulations protecting students and District employees from sexual harassment; and ensure the timely and thorough investigation of complaints alleging sexual harassment.

Director of Curriculum and Instruction
760 Magnolia Avenue,
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(Education Code 234.1; 5 CCR 4621)

II. Requirements and Prohibitions

The Board prohibits sexual harassment of any student by other students or District employees. The Board prohibits sexual harassment of any District employee by students or other District employees. (Prohibitions of other forms of harassment, discrimination, hate-motivated incidents, hate crimes, hazing, cyberbullying, and other misconduct directed at students and District employees are stated in Board Policies 4030 and 5145.3.)

The Board strongly encourages any student to immediately report suspected sexual harassment. The Board requires that any District employee immediately report suspected sexual harassment.

The Board prohibits retaliation against any student or District employee for reporting or attempting to stop suspected sexual harassment.

III. Definitions

For purposes of this regulation, the following definitions shall apply:

- A. **Sexual Harassment.** Sexual harassment includes, but is not limited to, sexual violence, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other unwanted verbal, visual, or physical conduct of a sexual nature, made during District-sanctioned programs and activities regardless of whether the programs or activities take place in District facilities, under any of the following conditions (Education Code Section 212.5).

1. Sexual Harassment of Students

- a. Submission to the harassing conduct is explicitly or implicitly made a term or condition of the student's academic status or progress.
- b. Submission to, or rejection of, the harassing conduct is the basis of academic decisions affecting the student.
- c. The harassing conduct has a negative impact on the student's work or academic performance.
- d. The harassing conduct creates a hostile environment.
- e. Submission to, or rejection of the harassing conduct is the basis of any decision affecting the student regarding services, honors, programs, or activities available at or through the District.

2. Sexual Harassment of District Employees

- a. Submission to the harassing conduct is explicitly or implicitly made a term or condition of employment, continued employment, or career opportunities or advancement.
- b. Submission to, or rejection of, the harassing conduct is the basis of employment decisions affecting the District employee.
- c. The harassing conduct has a negative impact on the District employee's work performance.
- d. The harassing conduct creates a hostile work environment.

- B. **Sexual Violence.** "Sexual violence" means a sexual act committed against a person without the person's freely given consent. Sexual violence includes:

1. Completed or attempted forced penetration of the person.
2. Completed or attempted alcohol/drug-facilitated penetration of the person.
3. Completed or attempted forced acts in which the person is made to penetrate a perpetrator or other person.
4. Completed or attempted alcohol/drug-facilitated acts in which the person is made to penetrate a perpetrator or other person.
5. Non-physically forced penetration which occurs after the person is pressured -- verbally or through intimidation or misuse of authority -- to consent or acquiesce.
6. Unwanted sexual contact.

7. Non-contact unwanted sexual experiences.

C. **Verbal Conduct.** “Verbal conduct” means verbal, written or electronic comments of a sexual nature, including but not limited to:

1. Sexual epithets, slurs, or jokes.
2. Sexual propositions or flirtations.
3. Sexually graphic commentary about a person’s body.
4. Sexually degrading words used to describe a person.
5. Sexually suggestive or obscene letters, notes, invitations or electronic communications.
6. Spreading sexual rumors.

D. **Visual Conduct.** “Visual conduct” means leering, making sexually-suggestive gestures, displaying sexually suggestive objects or images, or similar conduct.

E. **Physical Conduct.** “Physical conduct” means inappropriate touching of a person or impeding a person’s movement.

F. **Hostile Environment.** A “hostile environment” exists when sexually harassing conduct is sufficiently severe, persistent, or pervasive to undermine the learning environment and effectively deny or limit a student’s ability to participate in or benefit from District programs. A “hostile work environment” exists when sexually harassing conduct is sufficiently severe, persistent, or pervasive to undermine the teaching or work environment for a District employee.

G. **District Employees.** “District employees” include all administrators, teachers, staff, and District contractors or other persons authorized to transact business or perform services on behalf of the District.

IV. Reports and Complaints

The Board strongly encourages any student and requires that any District employee immediately report suspected sexual harassment, even if the victim has not complained.

The Board strongly encourages all other members of the school community, including parents/guardians and school visitors, to report incidents of suspected sexual harassment, even if the victim has not complained.

The Board prohibits retaliation against any student, District employee, or other person for reporting or attempting to stop suspected sexual harassment.

Reports and complaints of sexual harassment may be made orally or in writing, although the District encourages use of the Uniform & General Complaint Form. This form is available from site principals, at the District office (760 Magnolia Avenue), and on the District website (www.piedmont.k12.ca.us). Oral and written reports and complaints, regardless of their form, shall be given the same thorough investigation. When an oral report or complaint is received, the recipient shall prepare a written transcript.

Reports and complaints of sexual harassment may be made anonymously. However, the District may not take formal disciplinary action against a student or District employee based solely on an anonymous report or complaint. Also, when a person chooses to remain anonymous, the District cannot engage that person in the investigation, either to obtain or confirm information or to provide that person with a written report of the investigation.

A. Allegations Against a Student

When a student is alleged to have engaged in sexually harassing conduct, the report or complaint shall be directed to the site principal or principal's designee. The principal or designee shall be responsible for investigating the allegations and determining whether there has been a violation of District policy. Within 24 hours of receiving a report or complaint, the principal or designee shall forward the report, complaint, or transcription of an oral report to the District Compliance Officer.

If the report or complaint is initially directed to a teacher, counselor, or other staff member, whether orally or in writing, the recipient shall immediately forward the information to the site principal or designee.

B. Allegations Against a District Employee

When a District employee (other than the Superintendent) is alleged to have engaged in sexually harassing conduct, the report or complaint shall be directed to the Superintendent or designee. The Superintendent or designee shall be responsible for investigating the allegations and determining whether there has been a violation of District policy. Within 24 hours of receiving a report or complaint, the Superintendent or designee shall forward the report, complaint, or transcription of an oral report to the District Compliance Officer.

If the report or complaint is initially directed to a teacher, counselor, or other staff member, whether orally or in writing, the recipient shall immediately forward the information to the Superintendent or designee.

C. Allegations Against the Superintendent

When the Superintendent is alleged to have engaged in sexually harassing conduct against a student or District employee, the report or complaint shall be directed to the Board of Education.

The Board shall be responsible for investigating the allegations and determining whether there has been a violation of District policy. Within 24 hours of receiving a report or complaint, the Board shall forward the report, complaint, or transcription of an oral report to the District Compliance Officer.

If the report or complaint is initially directed to a teacher, counselor, or other staff member, whether orally or in writing, the recipient shall immediately forward the information to the Board of Education.

V. Investigation

The person charged with investigating allegations of sexual harassment (“the investigator”) shall act promptly and thoroughly, as described below.

A. Interviews

The investigator shall interview each of the following individually:

1. The person who made the initial report or complaint (“the complainant”). This interview shall be conducted within five (5) school days of the date the investigator received the complaint.
2. The victim (if different from “the complainant”). This interview shall be conducted within five (5) school days of the date the investigator received the complaint.
3. Witnesses, if any.
4. The person accused of sexual harassment (“the accused”).
5. Any other persons identified as having information related to the allegations.

At his or her discretion, the investigator may interview or consult with:

1. The Piedmont Police Department or other law enforcement agencies.
2. The District’s legal counsel.
3. Teachers, staff, administrators, or other District employees whose knowledge of the complainant, the victim, or the accused could help the investigator evaluate the situation or the veracity of the parties.
4. Anyone identified during the course of the investigation as having information that could help the investigator evaluate the situation or the veracity of the parties.

When necessary or appropriate to complete the investigation, the investigator may consult with:

1. The District Compliance Officer.
2. The Superintendent or designee.
3. The parent/guardian of the complainant (if the complainant is a student).
4. The parent/guardian of the victim (if the victim is a student).

5. The parent/guardian of the accused (if the accused is a student).

B. Opportunity for the Complainant and Victim to Provide More Information

The investigator shall provide the complainant (and the victim if the complainant is not the victim) an opportunity to explain the allegations, describe the underlying incident(s), identify witnesses or other persons with related information, and present any evidence or information that could help the investigator evaluate the allegations.

If the initial report or complaint was made orally or in a format other than the Uniform & General Complaint Form, the investigator shall provide the complainant (and the victim if the complainant is not the victim) with the opportunity to complete the Uniform & General Complaint Form (www.piedmont.k12.ca.us). The investigator shall offer to assist in completing the form.

C. Opportunity for the Accused to Respond

The investigator shall provide the accused an opportunity to respond to the allegations, including the opportunity to describe the underlying incident(s), identify witnesses or other persons with related information, and present any evidence or information that could help the investigator evaluate the allegations.

D. Opportunity to Mediate

During the investigation, the investigator shall offer the complainant (and the victim if the complainant is not the victim) and the accused the opportunity to resolve the allegations informally with the help of a counselor, teacher, administrator, or trained mediator. This is voluntary. The investigator shall not arrange for the victim or complainant to discuss the allegations directly with the accused without the consent of all parties or without providing appropriate facilitation and support for all parties.

E. Protection From Retaliation

Throughout the course of the investigation and after a determination is made, the investigator shall take all reasonable steps to ensure that the victim, complainant, and witnesses are protected against discrimination or retaliation based on the complaint. Evidence of any attempted or actual discrimination or retaliation shall be included in the report of investigation and plan for corrective and disciplinary action.

F. Determination and Written Report

The investigator shall determine whether there has been a violation of District policies prohibiting sexual harassment. To make this determination, the investigator shall evaluate the complete record of allegations, interviews, and evidence. The investigator may consider:

1. Credibility of the parties and any witnesses. The individual's level of detail, consistency, and evidence of past complaints made by or against the individual may be considered when assessing credibility.
2. Evidence of harm to the victim.
3. Evidence of past conduct by the accused.

Upon a determination of sexual harassment, the investigator shall write a report to the Superintendent including the allegations, summary of investigation, findings, determination, reasons for determination. If the Superintendent is the accused, the investigator shall address the report to the Board. If the investigator determines that a report or complaint contained knowingly false statements or accusations, investigator shall note this determination in his or her report. If the investigator determines that there has been actual or attempted retaliation against the victim, complainant, or witnesses, the investigator shall note this in his or her report.

No later than 60 days after the date of the original report or complaint, the investigator shall provide his or her written report to the victim, the complainant, the accused, the District Compliance Officer, and the Superintendent or designee.

VI. Corrective and Disciplinary Action

Upon a determination of sexual harassment, the Superintendent or designee shall decide the appropriate corrective, restorative, or disciplinary action to: end and redress sexual harassment; redress a hostile environment; protect the victim, complainant, and witnesses from retaliation; and refer the matter as appropriate to the Piedmont Police Department or other law enforcement agency. The Superintendent or designee may encourage counseling, guidance, restorative justice practices, training, and other support for all parties.

If the Superintendent is the accused, the Board shall decide the appropriate corrective, restorative, or disciplinary action against the Superintendent.

A. Considerations

When determining the appropriate corrective and/or disciplinary action, the Superintendent or designee (or, if the Superintendent is the accused, the Board) may consider:

1. The setting and context of the sexual harassment.
2. The number of victims.
3. The age and maturity of the victim and the accused.
4. Whether the sexual harassment was violent and caused or threatened physical harm.
5. Effects of the sexual harassment on victim safety and well-being, including effects on:
 - a. Students' ability to learn, develop, and thrive in a safe and secure school environment.

- b. District employees' ability to teach and advance the District's educational mission in a safe and secure workplace.
- 6. Frequency, duration, and pattern or past incidents of sexual harassment or retaliation by the accused.
- 7. Whether there is evidence of retaliation against the victim, complainant, or witnesses.
- 8. General school climate, including other incidents or harassment or sexual harassment.
- 9. Whether referral to the Piedmont Police Department or other law enforcement agency is appropriate.

B. Student Discipline

The Superintendent or designee may impose student discipline up to and including suspension or expulsion as provided by the California Education Code and Board policy.

C. Employee Discipline

The Superintendent or designee (or, if the Superintendent is the accused, the Board) may impose employee discipline up to and including unpaid leave and dismissal as provided by the California Education Code and Board policy.

D. Knowingly False Statements or Accusations

Upon a determination that a report or complaint contained knowingly false statements or accusations, the Superintendent or designee (or, if the Superintendent is the accused, the Board) shall decide the appropriate corrective, restorative, or disciplinary action.

E. Final Report

The Superintendent or designee shall write a final report that: incorporates the investigator's findings, determination, and reasons for determination; and includes the corrective or restorative action taken. If the disposition includes student or employee discipline, the final report shall include only the information permitted by law. The Superintendent or designee shall send the final report to the victim, the complainant, and the accused with a notice of their right to appeal. If the Superintendent is the accused, the Board shall write the final report and notify the parties.

VII. Confidentiality

Information related to a report or complaint shall be confidential to the extent provided by law. Individuals responsible for investigating the allegations or determining appropriate disciplinary, corrective, and restorative measures shall not discuss the allegations or related information except to the extent necessary to investigate and resolve the allegations.

VIII. Civil Law Remedies

Reporting sexual harassment to the District does not preclude an individual from seeking civil law remedies that may be available under state or federal discrimination and harassment laws, such as injunctions and restraining orders. When the allegations include discrimination, a complainant may be required to wait 60 days after filing of an appeal with the California Department of Education before pursuing civil law remedies.

IX. Annual Notification, Education, Training

At the beginning of each school year, the Superintendent or designee shall provide to students and their parents/guardians: the rules regarding student conduct including the prohibition on sexual harassment; and procedures for filing complaints. The District shall publish these rules and procedures in the Student Handbook and on the District's website, and display the rules and procedures in a prominent location near each school principal's office (Education Code Section 231.5, 48980).

Each year, the District shall provide age-appropriate information to students about: identifying and reporting sexual harassment; protection from retaliation for reporting suspected sexual harassment; and counseling and other support services and resources available to students confronting suspected sexual harassment.

At the beginning of each school year, the Superintendent or designee shall provide to all District employees: the rules regarding employee conduct including the prohibition on sexual harassment; and procedures for filing complaints. The District shall provide annual training to administrators, teachers, and staff about identifying and reporting suspected sexual harassment and protection from retaliation for reporting suspected sexual harassment.

LEGAL REFERENCES:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex, especially:

212.5 Sexual harassment

220-221.1 Gender, gender identity and gender expression

221.7 School-sponsored athletic programs; prohibited sex discrimination

230 Particular practices prohibited

231.5 Sexual harassment policy

233(e) Defines "hate violence"

32261 Right to attend safe schools, free from the misconduct addressed in this policy 35181

Governing board policy on responsibilities of students

35291-35291.5 Rules

44807 Duty concerning conduct of students

48908 Duties of students
48900-48925 Grounds for suspension or expulsion; sexual harassment
48900.3 Suspension or expulsion for act of hate violence
48900.4 Suspension or expulsion for threats or harassment
48904 Liability of parent/guardian for willful student misconduct
48907 Student exercise of free expression
48950 Freedom of speech
48980 Notice at beginning of term
49020-49023 Athletic programs

CIVIL CODE

51.9 Liability for sexual harassment; business, service and professional relationships 1714.1
Liability of parents/guardians for willful misconduct of minor

PENAL CODE

422.6, 422.7, 422.75 Liability for crimes based on discriminatory intent, including hate crimes

UNITED STATES CODE

18 USC 245 Federally Protected Activities
18 USC 249 Hate Crime Acts
20 USC 1681-1688 Title IX, 1972 Education Act Amendments
42 USC 2000d & 2000e et seq. Title VI & Title VII, Civil Rights Act of 1964 as amended

CODE OF FEDERAL REGULATIONS

34 CFR 104.7 Person Responsible for Overall Implementation of Title IX 34 CFR 106.8 Person
Responsible for Overall Implementation of Title IX CODE OF REGULATIONS, TITLE 5
300-307 Duties of pupils

COURT DECISIONS

Emmett v. Kent School District No. 415, (2000) 92 F.Supp. 1088
Bethel School District No. 403 v. Fraser, (1986) 478 U.S. 675
Tinker v. Des Moines Independent Community School District, (1969) 393 U.S. 503
Management Resources:

CSBA PUBLICATIONS

Cyberbullying: Policy Considerations for Boards, Governance and Policy Services Policy Brief,
July 2007

Protecting Our Schools: Governing Board Strategies to Combat School Violence, 1999

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Bullying at School, 2003

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Digital Discipline: Off-Campus Student Conduct, the First Amendment and Web Sites, School
Law in Review, 2001

NATIONAL SCHOOL SAFETY CENTER PUBLICATIONS

Set Straight on Bullies, 1989

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Preventing Bullying: A Manual for Schools and Communities, 1998

WEB SITES

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

California Coalition for Children's Internet Safety: <http://www.cybersafety.ca.gov> California

Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss> Center for Safe and

Responsible Internet Use: <http://csriu.org> and <http://cyberbully.org> National School Boards

Association: <http://www.nsba.org>

National School Safety Center: <http://www.schoolsafety.us>

U.S. Department of Education: <http://www.ed.gov>

U.S. Office of Juvenile Justice and Delinquency Prevention: <http://www.ojjdp.ncjrs.org> (11/02
3/04) 7/07

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