

Sexual Harassment 5145.7
(student policy)

The Governing Board is committed to maintaining an educational environment that is free from harassment, discrimination, intimidation and bullying. The Board prohibits sexual harassment of students by other students, employees, or other persons, at school or at school-sponsored or school-related activities. The Board also prohibits retaliatory behavior or action against persons who complain, testify, assist, or otherwise participate in district complaint processes.

(cf. [0410](#) - Nondiscrimination in District Programs and Activities)

(cf. [1312.3](#) - Uniform Complaint Procedures)

(cf. [4119.11/4219.11/4319.11](#) - Sexual Harassment)

Instruction/Information

The Superintendent or designee shall ensure that all district students receive age-appropriate instruction and information on sexual harassment, intimidation and bullying. Such instruction and information shall include:

1. What acts and behavior constitute sexual harassment, including the fact that sexual harassment could occur between people of the same sex
2. A clear message that students do not have to endure sexual harassment, intimidation and bullying
3. Encouragement to report observed instances of sexual harassment, even where the victim of the harassment has not complained
4. Information about the district's procedure for investigating complaints and the person(s) to whom a report of sexual harassment, intimidation and bullying should be made

(cf. [5131.5](#) - Vandalism and Graffiti)

(cf. [5137](#) - Positive School Climate)

(cf. [5145.3](#) - Nondiscrimination/Harassment)

(cf. [6142.1](#) - Sexual Health and HIV/AIDS Prevention Instruction)

Complaint Process

Any student who feels that he/she is being or has been sexually harassed, intimidated and bullied by a school employee, another student, or a non-employee on school grounds or at a school-related activity (e.g., a visiting athlete or coach) shall immediately contact his/her teacher or any other employee. An employee who receives such a complaint shall report it in accordance with administrative regulation.

(cf. [1312.1](#) - Complaints Concerning District Employees)

(cf. [5141.4](#) - Child Abuse Prevention and Reporting)

The Superintendent or designee shall ensure that any complaints regarding sexual harassment are immediately investigated in accordance with administrative regulation. When the Superintendent or designee has determined that harassment, intimidation and bullying has occurred, he/she shall take prompt, appropriate action to end the harassment and to address its effects on the victim.

Disciplinary Actions

Any student who engages in sexual harassment, intimidation and bullying of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and shall be subject to disciplinary action. For students in grades K-8, disciplinary action may include suspension and/or expulsion, provided that, in imposing such discipline, the entire circumstances of the incident(s) shall be taken into account.

(cf. [5131](#) - Conduct)

(cf. [5144.1](#) - Suspension and Expulsion/Due Process)

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

Confidentiality and Record-Keeping

All complaints and allegations of sexual harassment, intimidation and bullying shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR [4964](#))

(cf. [4119.23/4219.23/4319.23](#) - Unauthorized Release of Confidential/Privileged Information)

(cf. [5125](#) - Student Records)

The Superintendent or designee shall maintain a record of all reported cases of sexual harassment, intimidation and bullying to enable the district to monitor, address, and prevent repetitive harassing behavior in the schools.

Legal Reference:

EDUCATION CODE

[200-262.4](#) Prohibition of discrimination on the basis of sex

[48900](#) Grounds for suspension or expulsion

[48900.2](#) Additional grounds for suspension or 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 willful misconduct of minor

GOVERNMENT CODE

[12950.1](#) Sexual harassment training

CODE OF REGULATIONS, TITLE 5

[4600-4687](#) Uniform Complaint Procedures

[4900-4965](#) Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

[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

[106.1-106.71](#) Nondiscrimination on the basis of sex in education programs

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

Management Resources:

OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Sexual Harassment: It's Not Academic, September 2008

Revised Sexual Harassment Guidance, January 2001

WEB SITES

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

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

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AR 5145.7

Sexual Harassment Student policy regulation

Prohibited 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 made against another person of the same or opposite sex in the educational setting, when made on the basis of sex and 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

Note: The following list contains common examples of sexual harassment from the U.S. Department of Education Office for Civil Rights (OCR) publication Revised Sexual Harassment Guidance and definitions specified in 5 CCR [4916](#).

Examples of types of conduct which are prohibited in the district and which may constitute sexual harassment 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

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

School-Level Complaint Process/Grievance Procedure

1. Notice and Receipt of Complaint: Any student who believes he/she has been subjected to sexual harassment, intimidation and bullying or who has witnessed sexual harassment, intimidation and bullying may file a complaint with any teacher, administrator, or member of the governing board. Within 24 hours of receiving a complaint, the school employee shall report it to the district Principal. In addition, any school employee who observes any incident of sexual harassment, intimidation and bullying involving a student shall, within 24 hours, report this observation to the Principal, whether or not the victim files a complaint.

In any case of sexual harassment, intimidation and bullying involving the Principal to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall instead report to the Superintendent. In any case of sexual harassment involving the Superintendent to whom the Principal would ordinarily report the complaint, the employee who receives the student's report or who observes the incident shall instead report to the President of the Governing Board.

2. Initiation of Investigation: The Principal shall initiate an impartial investigation of an allegation of sexual harassment, intimidation and bullying within a reasonable amount of time of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. The district shall be considered to have "notice" of the need for an investigation upon receipt of information from a student who believes he/she has been subjected to harassment, the student's parent/guardian, an employee who received a complaint from a student, or any employee or student who witnessed the behavior.

If the Principal receives an anonymous complaint or media report about alleged sexual harassment, intimidation and bullying, he/she shall consider the specificity and reliability of the information, the seriousness of the alleged incident, and whether any individuals can be identified who were subjected to the alleged harassment in determining whether it is reasonable to pursue an investigation.

3. Initial Interview with Student: When a student or parent/guardian has complained or provided information about sexual harassment, intimidation and bullying, the Principal shall describe the district's grievance procedure and discuss what actions are being sought by the student in response to the complaint. The student who is complaining shall have an opportunity to describe the incident, identify witnesses who may have relevant

information, provide other evidence of the harassment, and put his/her complaint in writing. If the student requests confidentiality, he/she shall be informed that such a request may limit the district's ability to investigate.

4. Investigation Process: The Principal shall keep the complaint and allegation confidential, except as necessary to carry out the investigation or take other subsequent necessary action. (5 CCR [4964](#))

The Principal shall interview individuals who are relevant to the investigation, including, but not limited to, the student who is complaining, the person accused of harassment, anyone who witnessed the reported harassment, and anyone mentioned as having relevant information. The Principal may take other steps such as reviewing any records, notes, or statements related to the harassment or visiting the location where the harassment is alleged to have taken place.

When necessary to carry out his/her investigation or to protect student safety, the Principal also may discuss the complaint with the Superintendent or designee, the parent/guardian of the student who complained, the parent/guardian of the alleged harasser if the alleged harasser is a student, a teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth, law enforcement and/or child protective services, and district legal counsel.

(cf. [5141.4](#) - Child Abuse Prevention and Reporting)

5. Interim Measures: The Principal shall determine whether interim measures are necessary during and pending the results of the investigation, such as placing students on temporary independent study or assigning them to the office.

6. Optional Mediation: In cases of student-to-student harassment, when the student who complained and the alleged harasser so agree, the Principal may arrange for them to resolve the complaint informally with the help of a trained adult. The student who complained shall never be asked to work out the problem directly with the accused person unless such help is provided and both parties agree, and he/she shall be advised of the right to end the informal process at any time.

7. Factors in Reaching a Determination: In reaching a decision about the complaint, the Principal may take into account:

- a. Statements made by the persons identified above
- b. The details and consistency of each person's account
- c. Evidence of how the complaining student reacted to the incident
- d. Evidence of any past instances of harassment by the alleged harasser

e. Evidence of any past harassment complaints that were found to be untrue

To judge the severity of the harassment, the Principal may take into consideration:

a. How the misconduct affected one or more students' education

b. The type, frequency, and duration of the misconduct

c. The identity, age, and sex of the harasser and the student who complained, and the relationship between them

d. The number of persons engaged in the harassing conduct and at whom the harassment was directed

e. The size of the school, location of the incidents, and context in which they occurred

f. Other incidents at the school involving different students.

- 8. Written Report on Findings and Follow-Up: Within a reasonable amount of time after receiving the complaint, the Principal shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the Principal shall notify the student who complained and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If sexual harassment occurred, the report shall also include any corrective actions that have or will be taken to address the harassment and prevent any retaliation or further harassment. The Principal shall review this report with the Superintendent or designee prior to presenting it to other involved parties. If the Principal and Superintendent cannot reach an agreement regarding any aspect of the report, then the report will be presented to the Governing Board President for final decision. Once the report is approved by either the Superintendent or the Governing Board President, this report shall be presented to the student who complained, the person accused, the parents/guardians of the student who complained and the student who was accused.

In addition, the Principal shall ensure that the harassed student and his/her parent/guardian are informed of the procedures for reporting any subsequent problems. The Principal shall also make follow-up inquiries to see if there have been any new incidents or retaliation and shall keep a record of this information.

Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

(cf. [5131.5](#) - Vandalism and Graffiti)

2. Providing training to students, staff, and parents/guardians about how to recognize harassment and how to respond

(cf. [4131](#) - Staff Development)

(cf. [4231](#) - Staff Development)

3. Disseminating and/or summarizing the district's policy and regulation regarding sexual harassment

4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to parents/guardians and the community

(cf. [4119.23/4219.23/4319.23](#) - Unauthorized Release of Confidential/Privileged Information)

(cf. [5125](#) - Student Records)

5. Taking appropriate disciplinary action

In addition, disciplinary measures may be taken against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.

(cf. [4118](#) - Suspension/Disciplinary Action)

(cf. [4218](#) - Dismissal/Suspension/Disciplinary Action)

(cf. [5144.1](#) - Suspension and Expulsion/Due Process)

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

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](#))

(cf. [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](#))

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](#))

Note: Items #5 and #6 below are optional.

5. Be included in the student handbook

6. Be provided to employees and employee organizations

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Adopted Maple Creek School District 08/15/12