



Administrative Regulation

AR 4119.11/4219.11/4319.11

Personnel

SEXUAL HARASSMENT

This Administrative Regulation shall apply to all allegations of sexual harassment governed by Title IX of the Education Amendments of 1972 alleging that a District employee, intern, volunteer, or job applicant was subjected to sexual harassment, apart from those complaints filed by or against a student which shall be subject to District Board Policy (“BP”) and Administrative Regulation (“AR”) 5145.7 – [Students] Sexual Harassment. All other complaints of sexual harassment in the workplace shall be investigated and resolved pursuant to BP/AR 1312.1 – Complaints Concerning District Employees. The District Title IX Coordinator shall determine whether the allegations meet the definition of sexual harassment under Title IX.

Definitions

“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following: (34 CFR § 106.30)

(1) A District employee conditioning the provision of an aid, benefit, or service of the recipient on an individual'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 program or activity; or

(3) “Sexual assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. § 12291(a)(10), “domestic violence” as defined in 34 U.S.C. § 12291(a)(8), or “stalking” as defined in 34 U.S.C. § 12291(a)(30).

A “complainant” is a District employee, intern, volunteer, or job applicant who is alleged to be the victim of conduct that may constitute sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

A “respondent” is an individual who has been reported to be the perpetrator of conduct that may constitute sexual harassment.



A “formal complaint” is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a person employed by District or participating in a District program or activity and requesting that the District investigate the allegation of sexual harassment. A formal complaint shall be physically or electronically signed by the complainant and delivered to the Title IX Coordinator by mail, email, or personal delivery. (34 CFR § 106.30)

Reporting and Filing Complaint of Sexual Harassment

Any employee, intern, volunteer, or job applicant who believes that they have witnessed or been subjected to sexual harassment in the workplace or in connection with a District program or activity is strongly encouraged to report the incident or behavior to the District Title IX Coordinator.

Upon receiving a report of sexual harassment, the Title IX Coordinator shall promptly contact the alleged victim of right to file a formal complaint and the procedure for doing so. The Title IX Coordinator shall also confidentially discuss the availability of supportive measures, inform the alleged victim that supportive measures are available with or without filing a formal complaint, and consider their wishes with respect to supportive measures. Supportive measures may include counseling, modifications of work schedules, increased workplace security, mutual restrictions on contact between the parties, leaves of absence, and other similar measures as may be appropriate and reasonably available. (34 CFR § 106.44)

If the alleged victim chooses not to file a formal complaint, the Title IX Coordinator may file a formal complaint on the alleged victim’s behalf if the Title IX Coordinator finds that the situation presents a safety threat.

Investigation and Resolution of Formal Complaint

Upon receiving a formal complaint pursuant to this regulation, the Title IX Coordinator, designee, or other outside investigator appointed by the District shall:

- Within 10 days, commence the investigation and notify the complainant and the respondent of the allegations in the complaint.
- Send the complainant and the respondent written notice of any investigative interviews, meetings, or hearings;
- Not restrict either the complainant or respondent from discussing the allegations or gathering relevant evidence;



- Within 90 days, complete the investigation and provide the complainant and respondent with a copy of the relevant evidence as well as an investigative report that fairly summarizes relevant evidence

The complainant and respondent shall have 10 days to inspect, review, and respond to the evidence and investigative report. (34 CFR § 106.45)

A neutral decision-maker (who is not the Title IX Coordinator or investigator) shall review the relevant materials and issue a written decision within 120 days of the date of the formal complaint. Before issuing a written decision, the decision-maker shall provide the complainant and respondent the opportunity to: (34 CFR § 106.45)

1. Submit written, relevant questions that they want to ask the other party or a witness who was interviewed for the investigation;
2. Provide answers to the questions asked by the other party; and
3. Ask limited follow-up questions.

The written decision shall include findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and any remedies to be provided to the complainant. A copy of the written decision will be sent to the complainant and respondent simultaneously along with information on how to file an appeal.

If, at any time, the Title IX Coordinator finds that the allegations in a formal complaint do not meet the definition of sexual harassment, did not occur within the District's educational program or activity, or that the respondent is not a person in the United States, the formal complaint will be dismissed for purposes of Title IX.

In addition, the Title IX Coordinator may, at his/her discretion, dismiss a formal complaint or allegations therein at any time if: the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein; the respondent is no longer enrolled or employed by the District; or specific circumstances prevent the District from gathering sufficient evidence to reach a determination (34 CFR § 106.45)

Appeal

Either the complainant or the respondent may appeal the District's written decision or decision to dismiss a formal complaint by submitting a written request to the Title IX Coordinator within 30 days of the written decision. A party may request an appeal for the following reasons only: procedural irregularity that affected the outcome of the matter; there is newly discovered evidence that could affect the outcome of the matter; and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.



The appeal shall be heard by a different decision-maker (not the same person who issued the decision on appeal). On appeal, the decision-maker shall provide both parties equal opportunity to submit a written statement and shall issue a written decision simultaneously to both parties. (34 CFR § 106.45)

The Title IX Coordinator, investigator, decision-maker, and anyone who facilitates an informal resolution process for a complaint shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent specifically. Such persons shall receive Title IX training in accordance with 34 CFR 106.45. to submit a written statement and shall issue a written decision simultaneously to both parties. (34 CFR § 106.45)

Confidentiality

All complaints and allegations of sexual harassment shall be kept confidential except as required or permitted by law and as may be necessary to carry out the investigation or take other subsequent necessary action. (5 CCR § 4964)

However, when a complainant or victim of sexual harassment notifies the District of the harassment but requests confidentiality, the compliance officer shall inform him/her that the request may limit the District's ability to investigate the harassment or take other necessary action. When honoring a request for confidentiality, the District will nevertheless take all reasonable steps to investigate and respond to the complaint consistent with the request.

When a complainant or victim of sexual harassment notifies the District of the harassment but requests that the District not pursue an investigation, the District will determine whether or not it can honor such a request while still providing a safe and nondiscriminatory work environment.

Title IX Training

The Superintendent or designee shall ensure that all Title IX personnel receive training regarding the definition of sexual harassment under Title IX, the scope of the District's educational program or activity, how to conduct an investigation and grievance process under Title IX (including issues of relevance and rape shield protections), as applicable, and how to serve impartially by avoiding prejudgment, conflict of interests, and bias. As used herein, Title IX personnel refers to the Title IX Coordinator and any persons assigned or appointed by the District to serve as an investigator, decision-maker, or to facilitate an informal resolution process.



Employee 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 as required by state law. 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 Title IX Coordinator, investigator, decision-maker, and anyone who facilitates an informal resolution process for a complaint shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent specifically. Such persons shall receive Title IX training in accordance with 34 CFR 106.45. processes for employees to informally share or obtain information about harassment without filing a complaint.

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All such newly hired or promoted employees 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)

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 on the prohibition, prevention, and correction of sexual harassment, the remedies available to sexual harassment victims in civil actions, and potential District and/or individual exposure or liability;
2. The types of conduct that constitute sexual harassment and 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 workplace situations and other sources;
3. A supervisor's obligation to report sexual harassment, discrimination, and retaliation of which he/she becomes aware and what to do if the supervisor himself/herself is personally accused of harassment;



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4. Strategies for preventing harassment, discrimination, and retaliation and appropriate steps to ensure that remedial measures are taken to correct harassing behavior, including an effective process for investigation of a complaint;
 5. The essential elements of the District's anti-harassment policy, including the limited confidentiality of the complaint process and resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment, and how to use the policy if a harassment complaint is filed;
 6. A copy of the District's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that he/she has received;
 7. The definition and prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance;
 8. Practical examples of harassment based on gender identity, gender expression, and sexual orientation;

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

A copy of Board policy 4030 and this administrative regulation shall:

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
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
3. Appear in any school or District employee handbook or other publication that sets forth the school's or District's comprehensive rules, regulations, procedures, and standards of conduct
4. Be posted on the District's website, along with a copy of the Title IX training materials and information required by the California Department of Fair Employment and Housing ("DFEH") (34 CFR § 106.8; Government Code § 12950)
5. Be provided to employee organizations



Record-Keeping

The District shall maintain the following records for a period of at least seven years: (34 CFR § 106.45)

1. Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment as well as a statement as to why the District's response was not deliberately indifferent; in any instance where a complainant was not provided with supportive measures, the District shall document the reasons why supportive measures were not reasonable in light of the known circumstances;
2. A record of each sexual harassment investigation including any determination regarding responsibility, disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant, any appeal and the result of the appeal, any informal resolutions and the results thereof; and
3. All materials used to train Title IX Coordinators, decision-makers, and any person who facilitates an informal resolution process.

References:

1312.1 – Complaints Concerning District Employees
BP/AR 4030 - Nondiscrimination in Employment
BP/AR 5145.7 - Sexual Harassment
AR 4112.9/4212.9/4312.9 - Employee Notifications
BP/AR 4300 - Administrative and Supervisory Personnel

Regulation
Approved: 11/9/21

STOCKTON UNIFIED SCHOOL DISTRICT
Stockton, California

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