

# Buttonwillow Union School District

## Board Policy

Students

BP 5145.7(a)

### SEXUAL HARASSMENT

**Cautionary Notice:** The following administrative regulation reflects federal Title IX regulations added by 85 Fed. Reg. 30026, effective August 14, 2020, which establish a process for investigating and resolving allegations of conduct that meets the federal definition of sexual harassment. The federal regulations preempt any conflicting state law or regulations, but the interaction between federal and state law is not always clear. Districts should consult legal counsel if questions about a potential conflict arise. Districts should also note that 18 states, including California, have sued the U.S. Department of Education to stop the implementation of these regulations. A preliminary injunction seeking to postpone the effective date of the regulations and prohibit their enforcement is currently pending. If the court grants the injunction, portions of the following administrative regulation will not take effect.

Note: Education Code 231.5 and 34 CFR 106.8 mandates the district to have written policies on sexual harassment. The following policy addresses harassment by and of students in the school setting. As part of this mandate, the district should also adopt a sexual harassment policy related to employees; see BP/AR 4119.11/4219.11/4319.11 - Sexual Harassment.

Both federal law (Title IX of the Education Amendments of 1972) (20 USC 1681-1688; 34 CFR 106.1-106.82) and state law (Education Code 220, 231.5) prohibit sexual harassment and require districts to establish procedures for the prompt and equitable resolution of sexual harassment complaints. Whether a complaint is addressed through the federal Title IX complaint procedures adopted pursuant to 34 CFR 106.44-106.45, as added by 85 Fed. Reg. 30026, or the state uniform complaint procedures adopted pursuant to 5 CCR 4600-4670 is dependent on whether the alleged conduct meets the more stringent federal definition or the state definition of sexual harassment. See the accompanying administrative regulation, BP/AR 1312.3 - Uniform Complaint Procedures, and AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

A district can be held liable for civil damages for the sexual harassment of students pursuant to Title IX if the district is found to have been "deliberately indifferent" in its response to known sexual harassment. Pursuant to 34 CFR 106.30, a district is deliberately indifferent if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances.

In addition to filing a private civil lawsuit, an alleged victim of sexual harassment may file a complaint with the California Department of Education (CDE) and/or the U.S. Department of Education's Office for Civil Rights (OCR), the federal agency responsible for administrative enforcement of federal laws and regulations that prohibit discrimination in programs and activities that receive federal financial assistance from the U.S. Department of Education.

The Governing Board is committed to maintaining a safe school environment that is free from harassment and discrimination. The Board prohibits, at school or at school-sponsored or school-related activities, sexual harassment targeted at any student by anyone. The Board also prohibits retaliatory behavior or action against any person who reports, files a complaint or testifies about, or otherwise supports a complainant in alleging sexual harassment.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

**SEXUAL HARASSMENT (continued)**

34 CFR 106.44, as added by 85 Fed. Reg. 30026, requires the district, when there is actual knowledge of sexual harassment in an education program or activity, to respond promptly in a manner that is not unreasonable in light of the known circumstances. 34 CFR 106.30, as added, defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment being submitted to the district's Title IX Coordinator, any official of the district who has authority to institute corrective measures, or any employee of an elementary or secondary school.

It is important to note that a referral to law enforcement does not relieve a school district of its responsibility to investigate the complaint as a matter of sex discrimination.

The district strongly encourages student who feel that they are being or have been sexually harassed on school grounds or at a school-sponsored or school-related activity by another student or an adult, or who have experienced off-campus sexual harassment that has a continuing effect on campus, to immediately contact their teacher, the principal, the district's Title IX Coordinator, or any other available school employee. Any employee who receives a report or observes an incident of sexual harassment shall notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint is addressed through Title IX complaint procedures or uniform complaint procedures, as applicable, and shall offer supportive measures to the complainant

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*

**SEXUAL HARASSMENT** (continued)

Note: Education Code 234.6, as added by AB 34 (Ch. 282, Statutes of 2019), requires districts, beginning in the 2020-21 school year, to post the district's written policy on sexual harassment in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students.

Education Code 231.6, as added by AB 543 (Ch. 428, Statutes of 2019), requires districts serving students in grades 9-12 to create a poster that notifies students of the district's sexual harassment policy, and to display it prominently and conspicuously in each bathroom and locker room on campus.

Education Code 231.5, as amended by AB 543, requires the district to provide a copy of the district's sexual harassment policy as part of any orientation program conducted for new and continuing students.

Pursuant to 34 CFR 106.8, the district is required to notify students, parents/guardians, employees, and bargaining units of its policy to not discriminate on the basis of sex as well as its complaint procedures and processes, and to post this information in a prominent location on the district's web site and in student and staff handbooks.

Requirements related to the dissemination of the district's sexual harassment policy and procedures and best practices for reinforcing the policy are addressed in the accompanying administrative regulation.

The Superintendent or designee shall inform students and parents/guardians of the district's sexual harassment policy by disseminating it through parent/guardian notifications, publishing it on the district's web site, and including it in student and staff handbooks. All district staff shall be trained regarding the policy.

**Instruction/Information**

The Superintendent or designee shall ensure that all district students receive age-appropriate information on sexual harassment. 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 and could involve sexual violence
2. A clear message that students do not have to endure sexual harassment under any circumstance
3. Encouragement to report observed incidents of sexual harassment even when the alleged victim of the harassment has not complained

Note: Where sexual harassment or violence occurs in the context of other possible rule violations, students may be reluctant to report sexual harassment or violence. For example, a student who is sexually harassed while away from school without permission may be reluctant to file a complaint if the student believes that disciplined will be imposed for the violation. As such, item #4 below clarifies that any other rule violation will be addressed separately from the sexual harassment complaint in order to encourage students to report the harassment.

4. A clear message that student safety is the district's primary concern, and that any separate rule violation involving an alleged victim or any other person reporting a sexual harassment incident will be addressed separately and will not affect the manner in which the sexual harassment complaint will be received, investigated, or resolved

**SEXUAL HARASSMENT** (continued)

5. A clear message that, regardless of a complainant's noncompliance with the writing, timeline, or other formal filing requirements, every sexual harassment allegation that involves a student, whether as the complainant, respondent, or victim of the harassment, shall be investigated and action shall be taken to respond to harassment, prevent recurrence, and address any continuing effect on students
6. Information about the district's procedures for investigating complaints and the person(s) to whom a report of sexual harassment should be made
7. Information about the rights of students and parents/guardians to file a civil or criminal complaint, as applicable, including the right to file a civil or criminal complaint while the district investigation of a sexual harassment complaint continues
8. A clear message that, when needed, the district will implement supportive measures to ensure a safe school environment for a student who is the complainant or victim of sexual harassment and/or other students during an investigation

*Disciplinary Actions*

Note: Pursuant to Education Code 48900.2, a student in grades 4-12 may be suspended and/or expelled from school for sexual harassment.  
 Education Code 48915(c) requires the Superintendent or designee to recommend expulsion for any student, irrespective of grade, who commits sexual assault or battery as defined in the Penal Code. See AR 5144.1 - Suspension and Expulsion/Due Process.

Upon completion of an investigation of a sexual harassment complaint, any student found to have engaged in sexual harassment or sexual violence in violation of this policy shall be subject to disciplinary action. For students in grades 4-12, 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. 5144 - Discipline)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

Upon investigation of a sexual harassment complaint, any employee found to have engaged in sexual harassment or sexual violence toward any student shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

*(cf. 4117.7/4317.7 - Employment Status Report)*  
*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

**SEXUAL HARASSMENT (continued)****Record-Keeping**

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

(cf. 3580 - District Records)

*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

48985 Notices, report, statements and records in primary language

**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**

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

**UNITED STATES CODE, TITLE 20**

1092 Definition of sexual assault

1221 Application of laws

1232g Family Educational Rights and Privacy Act

1681-1688 Title IX of the Education Amendments of 1972

**UNITED STATES CODE, TITLE 34**

12291 Definition of dating violence, domestic violence, and stalking

**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**

99.1-99.67 Family Educational Rights and Privacy

106.1-106.82 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*, 2000, 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 continued: (see next page)

**SEXUAL HARASSMENT (continued)**

*Management Resources:*

CSBA PUBLICATIONS

*Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014*

*Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011*

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

*Q&A on Campus Sexual Misconduct, September 2017*

*Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016*

*Dear Colleague Letter: Title IX Coordinators, April 2015*

*Sexual Harassment: It's Not Academic, September 2008*

*Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, January 2001*

WEB SITES

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

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>