

MODESTO CITY SCHOOLS

Board Policy

BP 4119.11/4219.11/4319.11

ALL PERSONNEL

Sexual Harassment

The following policy shall apply to all District employees, interns, volunteers, contractors, job applicants, and other persons with an employment relationship with the District.

The Governing Board is committed to providing a safe work environment that is free of harassment and intimidation. The Board prohibits sexual harassment against District employees and retaliatory behavior or action against any person who complains, testifies, or otherwise participates in the complaint process established for the purpose of this policy.

Sexual harassment includes, but is not limited to, harassment that is based on the sex, gender, gender identity, gender expression, or sexual orientation of the victim and harassment based on pregnancy, childbirth, or related medical conditions.

(cf. 0410 – Nondiscrimination in District Programs and Activities)
(cf. 4030 – Nondiscrimination in Employment)

Definitions

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 work or educational setting when: (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. 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.

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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.

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation.
2. Publicizing and disseminating the District's sexual harassment policy to employees and others to whom the policy may apply.

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

3. Ensuring prompt, thorough, fair, and equitable investigation of complaints.
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments.

The Superintendent or designee shall periodically evaluate the effectiveness of the District's strategies to prevent and address harassment. Such evaluation may involve conducting regular anonymous employee surveys to assess whether harassment is occurring or is perceived to be tolerated, partnering with researchers or other agencies with the needed expertise to evaluate the District's prevention strategies, and using any other effective tool for receiving feedback on systems and/or processes. As necessary, changes shall be made to the harassment policy, complaint procedures, or training.

Sexual Harassment Reports and Complaints

District employees who feel that they have been sexually harassed in the performance of their District responsibilities or who have knowledge of any incident of sexual harassment by or against another employee shall immediately

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report the incident to their direct supervisor, a District administrator, or the District's Title IX Coordinator. Employees may bypass their supervisor in filing a complaint if the supervisor is the subject of the complaint. A supervisor or administrator who receives a harassment complaint shall promptly notify the Title IX Coordinator.

Once notified, the Title IX Coordinator shall ensure the complaint or allegation is addressed through AR 4119.12/4219.12/4319.12 - Title IX, Sexual Harassment Complaint Procedures or AR 4030 - Nondiscrimination in Employment, as applicable. Because a complaint or allegation that is dismissed or denied under the Title IX complaint procedure may still be considered under state law, the Title IX Coordinator shall ensure that any implementation of AR 4119.12/4219.12/4319.12 concurrently meets requirements of AR 4030. The Title IX Coordinator shall offer supportive measures to the complainant and respondent, as deemed appropriate under the circumstances.

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (2 CCR 11023)

Each complaint shall be timely investigated in a manner designed to respect the privacy rights of all parties to the complaint. (If such complaint is made against the Associate Superintendent, Human Resources, it shall be directed to the Superintendent. If such a complaint is made against the Superintendent, it shall be directed to the President of the Board of Education.)

Any employee who engages in such sexual harassment of an employee or applicant, student and/or volunteer during his or her employment may be subject to just cause disciplinary action up to and including dismissal. Any student who engages in such harassment of an employee or applicant may be subject to disciplinary action up to and including expulsion.

Any District employee found to have engaged or participated in sexual harassment or to have aided, abetted, incited, compelled, or coerced another to commit sexual harassment in violation of this policy shall be subject to disciplinary action, up to and including dismissal, in accordance with law and the applicable collective bargaining agreement.

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The District also prohibits retaliatory conduct against any harassment complainant or participant in the complaint process.

This policy shall be displayed in a prominent location in the Modesto City Schools' administrative building and other District school and work sites. This policy shall be provided to current District employees and shall be provided to new employees at orientation.

Legal References:

EDUCATION CODE

200-240 Prohibition of discrimination on the basis of sex, especially:

200-262.4 Educational equity; prohibition of discrimination on the basis of sex

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

12940 Unlawful discriminatory employment practices

12950 Sexual harassment

12950.1 Sexual harassment training

LABOR CODE

1101 Political activities of employees

1102.1 Discrimination: sexual orientation

UNITED STATES CODE, TITLE 20

1681-1688 Title IX prohibition against discrimination

UNITED STATES CODE, TITLE 42

2000d & 2000e et seq. Title VI & Title VII, Civil Rights Act of 1964 as amended

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

2000h-2 et seq. Title IX, 1972 Education Act Amendments

CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment

11021 Discrimination in employment - retaliation

11023 Harassment and discrimination prevention and correction

11024 Required training and education on harassment based on sex, gender identity and expression, and sexual orientation

11034 Terms, conditions, and privileges of employment

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs

CODE OF FEDERAL REGULATIONS, TITLE 34

106.1-106.9 Nondiscrimination on the basis of sex in education programs or activities

106.51-106.61 Nondiscrimination on the basis of sex in employment in education programs or activities

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Management Resources:

COURT DECISIONS

Department of Health Services v. Superior Court of California, (2003) 31 Cal.4th 1026

Faragher v. City of Boca Raton, (1998) 118 S.Ct. 2275

Burlington Industries v. Ellreth, (1998) 118 S.Ct. 2257

Gebser v. Lago Vista Independent School District, (1998) 118 S.Ct. 1989

Oncale v. Sundowner Offshore Serv. Inc., (1998) 118 S.Ct. 998

Meritor Savings Bank, FSB v. Vinson et al., (1986) 447 U.S. 57

Daily Journal D.A.R. 2130

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATION

Promising Practices for Preventing Harassment, November 2017

WEBSITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov/>

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

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov/>

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